

1 DB7LCHE1

Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 CHEVRON CORPORATION,

5 Plaintiff,

6 v.

7 11 Cv. 0691 (LAK)

8 STEVEN R. DONZIGER, et al.,

9 Defendants.

10 -----x
11 November 7, 2013
12 9:37 a.m.

13 Before:

14 HON. LEWIS A. KAPLAN
15 District Judge16 APPEARANCES
1718 GIBSON, DUNN & CRUTCHER LLP
19 Attorneys for Plaintiff
20 BY: RANDY M. MASTRO
21 ANDREA E. NEUMAN
22 REED M. BRODSKY
23 JEFFERSON E. BELL
24 ANNE CHAMPION
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27 Attorneys for Donziger Defendants
28 BY: RICHARD H. FRIEDMAN
29 DEE TAYLOR30 LITTLEPAGE BOOTH
31 Attorneys for Donziger Defendants
32 BY: ZOE LITTLEPAGE
33 RAINNEY BOOTH34 GOMEZ LLC
35 Attorneys for Defendants Hugo Camacho, Javier Piaguaje
36 BY: JULIO C. GOMEZ

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Trial

1 (Trial resumed)

2 THE COURT: Good morning, all.

3 MR. MASTRO: Good morning, your Honor.

4 THE WITNESS: Good morning.

5 THE COURT: I hope it's not raining in here, Andy.

6 Good morning, Mr. Zambrano. You're still under oath.

7 Let's continue, folks.

8 MR. BOOTH: Yes, your Honor. Good morning.

9 THE WITNESS: Good morning. Thank you.

10 NICOLAS ZAMBRANO, resumed.

11 CROSS-EXAMINATION (cont'd)

12 BY MR. BOOTH:

13 Q. Good morning, Dr. Zambrano.

14 A. Good morning.

15 Q. I want to talk to you this morning about the process you
16 went through of actually dictating the judgment in the
17 Ecuadorian Lago Agrio case.18 First of all, who actually typed the words into the
19 new computer in your office?

20 A. Ms. Calva.

21 Q. Did you ever type any of the judgment in the Lago Agrio
22 Chevron case yourself into the computer?

23 A. Yes.

24 Q. Will you estimate for us how much of the judgment in the
25 Chevron Lago Agrio case Ms. Calva typed compared to you?

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Zambrano - cross

1 A. Could you please clarify the percentage that I typed or the
2 percentage that Ms. Calva typed?

3 Q. The percentage that Ms. Calva typed, please.

4 A. Between 80 and 85 percent.

5 Q. Other than Ms. Calva and you, did anyone else type any of
6 the words in the Lago Agrio Chevron judgment?

7 A. No.

8 Q. Now, I think you described or used the term dictating in
9 describing the writing of the judgment. I want to ask you to
10 describe that process. Tell the Court, please, how you went
11 about dictating the judgment in this case.

12 A. Yes. From the cases that I had, from the cuerpos, from the
13 notebooks that I had pertaining to this case, from the notes
14 that I had gathered, from all the documentation that was
15 available to me, I proceeded to dictate it and I would form the
16 concept, the idea, and that way it would be gathered in the
17 computer, collected in the computer.

18 Q. And when you dictated, did you dictate into a machine?

19 A. What do you mean dictated into a machine?

20 Q. When you dictated as you just described, did you dictate
21 into any type of machine or did you dictate directly to
22 Ms. Calva?

23 A. I would dictate directly to Ms. Calva.

24 Q. Can you -- sorry.

25 Will you please describe for the Court when you talk

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Zambrano - cross

1 about notes and pages from the *cuerpos*, will you please give
2 the Court some idea of how much information you're talking
3 about?

4 A. A lot of documentation. I had the *cuerpos* scattered,
5 notes, my notations, the documentation. I would grab one, I
6 would refer to it, and I would dictate parts of a document. I
7 would place the page where it had been found, I would cite.

8 Q. Please tell the Court how you decided what documents to use
9 in your dictation.

10 A. Those documents were relevant to the environmental trial
11 that was being heard, from the evidence gathered during the
12 trial, and that in the record in the trial.

13 Q. And, sir, will you tell the Court whether it was your
14 decision what documents you used or did someone else tell you
15 what documents to use?

16 MR. MASTRO: Objection to form, compound.

17 THE COURT: Sustained.

18 Q. Will you please tell the Court who made the decision what
19 documents you would use to dictate the judgment.

20 A. I always made a decision of taking this or that document.
21 And all these references, all these citations, I have a record
22 for them in the judgment.

23 Q. Dr. Zambrano, did you ever show Ms. Calva any document for
24 her to type from?

25 A. No.

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1 MR. BOOTH: Your Honor, may I approach?

2 THE COURT: You may.

3 MR. MASTRO: There's no English. Your Honor, this is
4 in Spanish. We have typically proceeded on the basis that
5 there's a certified translation of documents in English when
6 we're going to present a witness with Spanish.

7 MR. BOOTH: May I lay some foundation, your Honor?

8 THE COURT: You can try. Yes, go ahead.

9 Q. Dr. Zambrano, I've handed you what has been marked as
10 Defendant's Exhibit DX1554. Would you look at that document,
11 please.

12 First of all, do you recognize what that document is?

13 A. Yes. This is a jurisprudence from the Supreme Court of
14 Justice.

15 MR. BOOTH: And, your Honor, we would move into
16 evidence Defendant's Exhibit 1554, not for the truth of the
17 matter asserted. I apologize there's no English translation.
18 I will not go into the document in light of the fact there is
19 no English translation. I just couldn't find one.

20 THE COURT: What's the point of it?

21 MR. BOOTH: I can discuss it at side bar if you'd
22 like. I don't want to say it in front of the witness.

23 THE COURT: Secret code would be just about as useful.

24 MR. BOOTH: Because, your Honor, you didn't want me to
25 say things in front of the witness and I'd rather not say it in

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1 front of the witness.

2 THE COURT: All right. Come up to the side bar.

3 (At the side bar)

4 THE COURT: You know, first of all, right at the
5 bottom it seems to indicate that this is something you printed
6 off Lexis.

7 MR. BOOTH: Yes, your Honor.

8 THE COURT: So.

9 MR. BOOTH: There is no English. I mean we couldn't
10 find any English translation of it and we didn't have time.

11 THE COURT: What's the point of this exercise?

12 MR. BOOTH: The point of it, your Honor, is that this
13 is a common source for parts of the judgment. In other words,
14 this is there are pages in here that he -- who the author of
15 the judgment dictated portions of. And I don't know that -- I
16 think it's probably not fair for me to go into that since there
17 is no English translation, but I do want to identify the
18 document and have it in evidence not for the truth of the
19 matter asserted.

20 I will remind the Court that much of the expert
21 reports in the case establish the comparison of language used
22 Spanish similarities. Again, we're not offering this to show
23 that it's right or what they argued in English or anything but
24 the case in English, but in terms of matching up the
25 similarities.

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1 THE COURT: What exactly is the objection if there is
2 one?

3 MR. MASTRO: Your Honor, the objection, in addition to
4 the fact that I can't read it so I can't at this point
5 knowledgably be able to question the witness on it, more
6 importantly is relevance. This is probative of nothing. He
7 got this off of Lexis and Mr. Fajardo and Mr. Donziger, writing
8 the judgment back home in the comfort of their homes, could
9 have pulled this off Lexis too. This proves nothing that they
10 pulled a source document off of Lexis from 2002, proves
11 nothing. And it's misleading to have this come in under these
12 circumstances when it is probative of nothing. It doesn't show
13 he wrote the judgment.

14 MR. BOOTH: It goes to a specific issue. On the first
15 day of the testimony, first of all, the fact that he has an
16 argument against it doesn't mean it's not probative.

17 Secondly, on the first day there was a big discussion
18 about French law and how in the world can anyone cite French
19 law because you'd have to speak French because that's the only
20 language French law would ever be discussed in. In this case
21 it discusses French, Colombian, Argentine law.

22 MR. GOMEZ: In fact, your Honor, that various passage
23 appears verbatim in the sentencia.

24 THE COURT: I'm sorry?

25 MR. GOMEZ: The very passages about discussions of

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1 French law also appear verbatim in the judgment. And we do
2 have the pages that are similar translated. We have those four
3 or five pages translated in English. We do not have the entire
4 thing translated.

5 MR. MASTRO: Your Honor, also haven't laid a proper
6 foundation. There's nothing that says he even knows what this
7 document is or would have any recollection of it.

8 MR. BOOTH: He did recognize it. He said I recognize
9 it.

10 MR. MASTRO: Because you put it in front of him. If
11 you asked him --

12 THE COURT: The foundation is inadequate. There's
13 nothing on the face of this that even establishes that it is
14 what he says it is. I don't know if it's a decision of the
15 Supreme Court of Ecuador. For all I know, somebody typed this
16 up in his basement and he looks at it and he said, well, it
17 looks like a decision of the Supreme Court of Ecuador. So I
18 think you have to do a little better than that.

19 MR. MASTRO: Thank you, your Honor.

20 (In open court)

21 MR. MASTRO: Just before we continue, there is some
22 highlighting on the first page of what we received. Mr. Booth
23 had highlighting on other pages. I don't know whether the
24 witness's has any highlighting other than the first page.

25 MR. BOOTH: There shouldn't be.

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1 THE COURT: I'm looking at it in front of the witness
2 and it does have the highlighting.

3 MR. MASTRO: I meant after the first page.

4 THE COURT: After the first page.

5 MR. MASTRO: Which is what Mr. Booth referred to at
6 the side bar.

7 THE COURT: The copy I was given does not.

8 MR. MASTRO: I see only the highlighting on the first
9 page of what was handed to the witness, your Honor. Thank you,
10 your Honor.

11 Thank you, Mr. Booth.

12 MR. BOOTH: May I continue, your Honor?

13 THE COURT: Yes.

14 BY MR. BOOTH:

15 Q. Dr. Zambrano, do you recognize this document or what -- let
16 me ask -- can you tell us, do you recognize this case?

17 A. Yes. I recall more or less.

18 Q. And in dictating your judgment in the Lago Agrio Chevron
19 case, did you rely on Ecuadorian law at all?

20 A. Yes. This is one of the case law that was very useful to
21 me in the Ecuadorian case.

22 Q. Let me ask that question. Did you, in drafting your
23 judgment in the Lago Agrio Chevron case, actually, can you tell
24 us whether or not you relied on this particular case?

25 A. Yes.

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1 Q. Do you know the name, can you tell us the name of this case
2 or will tell us the name of this case, I should say?

3 A. Well, this was a complaint brought by the communities of
4 Esmeraldas Province against Petroecuador.

5 MR. BOOTH: Your Honor.

6 MR. MASTRO: Objection, move to strike.

7 Nonresponsive.

8 THE COURT: The answer is stricken. It is
9 nonresponsive.

10 Q. Dr. Zambrano, is what you just told us the way the case is
11 named in Ecuador?

12 MR. MASTRO: I haven't been objecting to leading, your
13 Honor, but it's leading. Objection.

14 MR. BOOTH: Let me ask it a different way.

15 Q. Dr. Zambrano, will you tell the Court how this case is
16 referred to in Ecuador?

17 THE COURT: If indeed it is a case.

18 A. This case is so unique because it was one of the first ones
19 dealing with environmental pollution and this is definitely
20 where one observes that the burden of proof is inverted.

21 MR. MASTRO: Objection, your Honor. Move to strike.

22 THE COURT: Granted.

23 Q. Sorry, Dr. Zambrano, let me try to ask a question.

24 In Ecuador, first of all, I think you've answered
25 this, but let me ask you, is this -- does this document refer

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1 to a particular case in Ecuador?

2 A. Yes.

3 Q. And when this case is referred to in Ecuador, what do
4 people in Ecuador name or call this case?

5 A. I don't recall exactly.

6 Q. Earlier when you were describing the parties to the case --

7 THE COURT: Dr. Zambrano, have you in conversation or
8 in a document you wrote ever referred to this case anywhere?

9 THE WITNESS: Yes, in the judgment.

10 THE COURT: And when you did so, what did you refer to
11 the case as?

12 THE WITNESS: I don't recall right now.

13 THE COURT: In Ecuadorian practice, is the party who
14 brings a case the plaintiff?

15 THE WITNESS: Plaintiff.

16 THE COURT: And is the party who is sued referred to
17 as a defendant?

18 THE WITNESS: Yes.

19 THE COURT: And is it customary on your part in
20 referring to a case in Ecuador to refer to it by the name of
21 the plaintiff and the name of the defendant?

22 THE WITNESS: On many occasions I refer to it that way
23 and I made the citation.

24 THE COURT: And you referred to the case that was
25 before you in Ecuador as Aguinda against or versus Chevron,

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1 true?

2 THE WITNESS: It is more commonly known as Chevron,
3 but it is also perfectly known as Aguinda v. Chevron.4 THE COURT: All right. And this document that the
5 lawyer placed before you, Defendant's Exhibit 1554, assuming it
6 is in fact a judicial decision, what is the name of it?

7 THE WITNESS: I don't recall right now.

8 THE COURT: Okay. Go ahead, Mr. Booth.

9 MR. BOOTH: Thank you, your Honor.

10 Q. Dr. Zambrano, do you recall the name of the plaintiffs in
11 this case, the case before you?

12 A. It was an Esmeraldan town, a community of Esmeralda.

13 Q. And do you recall the name of the defendant in this case?

14 A. Petroecuador.

15 Q. And, Dr. Zambrano, if you look at the highlighted portion
16 on the first page where it says Corte Suprema de Justicia, what
17 court is that?18 A. That is the court of Esmeralda province. Excuse me. The
19 Corte Suprema is what is now the current national court. There
20 is no longer a Supreme Court.21 Q. And where it says Primer a Sala de lo Civil y Mercantil,
22 what does that mean, if anything?

23 A. That is a specialized chamber of the national court.

24 Q. Is the national court Corte Suprema de Justicia, is that
25 the highest court in Ecuador?

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158 A. This is the cassation entity. This is maximum entity.

159 Q. I don't understand maximum. Can you explain what that
160 means?

161 THE INTERPRETER: Interpreter correction: Highest.

162 MR. BOOTH: I understand now. Thank you.

163 Your Honor, we would move into evidence Defendant's
164 Exhibit 1554 not for the truth of the matter asserted and
165 subject if, obviously, if the Court wants us to prove up
166 somehow that it is what we've said it is, I'm not going to use
167 it any more today, but we would move it into evidence.168 THE COURT: Well, if you're not going to use it any
169 more today, well let me hear from Mr. Mastro.170 MR. MASTRO: I have an objection, your Honor, and I'd
171 like to come to the side bar about it.

172 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Mr. Mastro.

3 MR. MASTRO: I object, your Honor. I still think we
4 have the same foundation issues and relevance issues. We would
5 now prove up that in fact this was a case that was cited by
6 Chevron in its briefs in the case. This isn't something this
7 judge came up with. He showed him the document. The guy reads
8 the first page and it took him almost half an hour to get out
9 some description in a general sense of who the plaintiff was.

10 THE COURT: Could you be a little more concise.

11 MR. MASTRO: I don't think they have either laid
12 foundation or this is relevant at all or probative of anything.
13 So I object.14 THE COURT: Do you dispute that this is what they seem
15 to claim it is, that is to say, a reported decision of this
16 court in the province of Esmeraldas?17 MR. MASTRO: We do not dispute that. I can't read it
18 because it's in Spanish, but it looks to be that case. But to
19 us it's probative of nothing to have that come into evidence
20 here.21 THE COURT: The argument, I take it, from Mr. Booth --
22 and he'll correct me if I'm wrong -- is that there's language
23 in the decision that appears also in Plaintiff's Exhibit 399.

24 Is that right, Mr. Booth?

25 MR. BOOTH: Yes, your Honor.

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1 THE COURT: And that is intended to prove that there
2 was a source either in the record before this judge or
3 otherwise properly available to him from which that particular
4 passage, whatever it is, could have come. Is that correct?

5 MR. BOOTH: Yes, your Honor.

6 THE COURT: All right.

7 MR. BOOTH: More as well, but, yes, that's correct.

8 THE COURT: What else?

9 MR. GOMEZ: In particular, your Honor, the point that
10 that particular passage makes reference to French law, which
11 was an issue that was raised by the plaintiffs as demonstrating
12 the witness's lack of authorship for his failure to speak
13 French law. If the source of the French law cited in the
14 sentencia comes from an Ecuadorian court decision, then it
15 undermines the argument that his lack of facility with the
16 French language --

17 THE COURT: It might or it might not depending on
18 what's in the decision and what he wrote, if he wrote anything.

19 MR. MASTRO: Right.

20 THE COURT: But that's another issue.

21 MR. MASTRO: And there multiple references to French
22 law in the decision, your Honor, that are unrelated to this
23 case.

24 THE COURT: All right. Look, if there is no dispute
25 as to authenticity, that is, as to the assertion that this is a

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1 report of a decision by this court in the Province of
2 Esmeraldas, then I don't see why I shouldn't take it for what
3 it's worth. But the defense is going to have to provide an
4 English translation.

5 MR. BOOTH: Absolutely.

6 MR. MASTRO: Exactly, your Honor. That's what I was
7 going to say.

8 THE COURT: While on the subject of translation,
9 Plaintiff's Exhibit 400 and the English part of the
10 clarification, my recollection is that at least as to the
11 first, that is to say, the judgment, and possibly as to the
12 second, that is to say, the causation, I insisted early in this
13 litigation that the parties attempt to agree a translation.
14 And my memory is that at least as to the judgment you did.

15 MR. MASTRO: That's correct, your Honor.

16 MR. GOMEZ: That's correct.

17 THE COURT: Now, is that true also with respect to the
18 clarification which --

19 MR. MASTRO: I believe so, your Honor.

20 MR. GOMEZ: Yes, I believe so.

21 MR. MASTRO: What we submitted.

22 THE COURT: Am I being told by all counsel that
23 Plaintiff's 399, 400, and I think it's 429 to 431 is the
24 clarification stuff, the English translations that are in
25 evidence are in fact the translations that were agreed among

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1 all counsel?

2 MR. MASTRO: Yes, your Honor.

3 MR. GOMEZ: Yes, your Honor.

4 MS. LITTLEPAGE: Yes.

5 THE COURT: That clears that up. Okay.

6 (In open court)

7 THE COURT: The parties are agreed that there is no
8 dispute over the fact that Defendant's Exhibit 1554 is a copy
9 of a report of a judicial decision by the Superior Court of
10 Justice of Esmeraldas. It is offered not for the truth of
11 anything contained therein, but simply for the fact of what it
12 contains, the statements it contains, not for the truth.

13 MR. BOOTH: Your Honor, may I. I apologize for
14 interrupting. I don't think that's what he called it. This is
15 from the national court, not from the local court.

16 THE COURT: Is that the agreement?

17 MR. MASTRO: Yes, your Honor.

18 THE COURT: All right. I stand corrected as to that.
19 It's from the national court. It's received not for the truth
20 of the matters asserted, and it's received subject to the
21 condition that I be provided with an English translation.

22 (Defendant's Exhibit 1554 received in evidence)

23 THE COURT: Let's move along.

24 MR. BOOTH: Yes, your Honor.

25 Q. Dr. Zambrano, will you tell the Court whether the judgment

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1 in the Lago Agrio Chevron case dated February 14, 2011 is or
2 was your decision as the judge on that case?

3 MR. MASTRO: Objection, asked and answered, your
4 Honor.

5 THE COURT: I think so.

6 Q. Will you tell the Court whether in deciding the Lago Agrio
7 Chevron case you were influenced by any promises or threats
8 from anybody?

9 MR. MASTRO: Objection to form, leading, asked and
10 answered.

11 THE COURT: Overruled.

12 A. No.

13 MR. BOOTH: Thank you, your Honor. No more questions.

14 Thank you, Dr. Zambrano.

15 THE COURT: Okay. Redirect. I'm sorry.

16 Mr. Gomez, do you want to examine?

17 MR. GOMEZ: Yes, your Honor.

18 CROSS-EXAMINATION

19 BY MR. GOMEZ:

20 Q. Good morning, Dr. Zambrano.

21 A. Good morning.

22 Q. Dr. Zambrano, how old are you?

23 A. I will turn 58.

24 Q. Where were you born?

25 A. In Guayaquil, Ecuador.

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1 Q. Where did you grow up?

2 A. In Guayaquil.

3 Q. What did your parents do for a living, Dr. Zambrano?

4 A. Working.

5 Q. What did they work in?

6 A. My father was the administrator of the water company. And
7 my mother worked in the national hygiene institute.

8 Q. When you were growing up, were there any lawyers in your
9 family, sir?

10 A. No.

11 Q. Were you the first person in your family to become a
12 lawyer?

13 A. Yes.

14 Q. Why did you choose to become a lawyer, sir?

15 A. Because I liked to behave with probity and always with the
16 truth.

17 Q. What do you enjoy most about the practice of law?

18 A. To try to give each person what is his or hers.

19 Q. What degrees do you hold, sir, that allow you to practice
20 law in Ecuador?

21 A. Bachelor's of political and social sciences, a degree as an
22 attorney for the courts of the republic, a higher degree in
23 fundamental and constitutional rights, and a specialization in
24 criminal law and indigenous justice.

25 Q. When did you obtain each of those degrees, sir?

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1 A. The bachelor's degree in 1980; the attorney degree, the
2 attorney degree in 1982; the certification in 2006, if I'm not
3 mistaken; and the specialization in 2007.

4 Q. What institution bestowed these degrees on you, sir?

5 A. The bachelor's degree and the attorney's degree, it was
6 conferred by the State University of Guayaquil; the
7 certification by the State University of Guayaquil; and the
8 certification, the specialization by the Autonomous University
9 of the Andes.

10 Q. Where is that last university located?

11 A. In the city of Ambato.

12 Q. How long did you practice law before becoming a prosecutor,
13 sir?

14 A. May I answer with an explanation?

15 Q. Absolutely.

16 THE COURT: Well, let's back up.

17 Did you, sir, before you became a prosecutor practice
18 law?

19 THE WITNESS: Yes.

20 THE COURT: Would you describe for us what you meant
21 in saying that you practiced law, what did you do and for whom?

22 THE WITNESS: Yes. Initially I was in the Air Force.
23 And while there, even though I was a secretary and a prosecutor
24 of the criminal court of the second Air Force area when I was
25 authorized to practice this profession outside the military

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1 institution, but I did begin to practice law once I left the
2 Air Force. And during that time, that was for about two or
3 three years, if we add all this, it comes to about six, about
4 nine years, more or less.

5 THE COURT: Excuse me, sir.

6 So is it accurate that you were in the Air Force for
7 six or seven years; is that right?

8 THE WITNESS: Six years approximately.

9 THE COURT: All right. And is it correct that during
10 that period, you to some extent engaged in the practice of law
11 outside of the Air Force?

12 THE WITNESS: I did practice it, but currently
13 military personnel cannot practice law.

14 THE COURT: When you were in the Air Force, were you
15 permitted to practice law outside the Air Force?

16 THE WITNESS: Indeed I had to practice it because the
17 civil matters I would have to, to conduct as an advisor of the
18 members of the institution.

19 THE COURT: What institution?

20 THE WITNESS: The Air Force in its totality, the
21 second Air Force area, zone.

22 THE COURT: Am I correct in understanding that while
23 you were in the Air Force, you sometimes represented military
24 personnel in matters outside of the Air Force; is that
25 accurate?

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1 THE WITNESS: Yes.

2 THE COURT: And other than representing members of the
3 Air Force, did you engage in the practice of law outside of the
4 Air Force while you were in the Air Force?

5 THE WITNESS: In some cases.

6 THE COURT: How much of your time while you were in
7 the Air Force did you spend representing or advising people in
8 legal matters where the people who you advised or represented
9 were not members of the military?

10 THE WITNESS: When a member of the Air Force -- well,
11 let's see. When a relative of theirs needed some sort of legal
12 assistance, even though they were not members of the Air Force,
13 I would give them legal advice.

14 THE COURT: Now, after you left the Air Force, if I
15 understand you accurately, you engaged in the practice of law
16 for two or three years before you became a prosecutor; is that
17 right?

18 THE WITNESS: Yes.

19 THE COURT: Describe the nature of that practice you
20 did, please.

21 THE WITNESS: Different cases.

22 THE COURT: What percentage of them were criminal?
23 Approximately.

24 THE WITNESS: In practicing my profession, I could see
25 all kinds of cases. I couldn't give you an estimate. It's

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1 different from having a specific specialty.

2 THE COURT: That's true here too, Mr. Zambrano. But
3 were you principally a practitioner on behalf of defendants in
4 criminal cases or not when you were in private practice after
5 you left the Air Force?

6 THE WITNESS: No. Civil cases and criminal cases.

7 THE COURT: What kind of civil cases did you handle
8 when you were in private practice after the Air Force?

9 THE WITNESS: In fact I was in charge of
10 representation at the Rivadeneira, the Rivadeneira Consultora,
11 consulting firm Rivadeneira. It's three companies, Coequipos,
12 and Brisas del Rio. It's three different companies. Those
13 were exclusively civil matters.

14 THE COURT: And what kind of civil matters?

15 THE WITNESS: It was disputes regarding housing,
16 nonpayment of rents.

17 THE INTERPRETER: I need to look in my dictionary,
18 your Honor.

19 THE WITNESS: Statute of limitations on property
20 acquisitions, effective possession of property, etc.

21 THE COURT: What does "etc." include, sir?

22 THE WITNESS: Labor and different issues that would
23 come up and the manager would have me take care of them.
24 Collection matters, as well.

25 THE COURT: So this was all for these three companies;

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Zambrano - cross

1 is that right?

2 THE WITNESS: Yes.

3 THE COURT: Did you have other private clients other
4 than the three companies?

5 THE WITNESS: Yes.

6 THE COURT: What kinds of matters did you represent
7 those clients in in the two or three years after you left the
8 Air Force?

9 THE WITNESS: Different matters but mainly dependency,
10 executorial or executive trials.

11 THE INTERPRETER: I need to inquire, your Honor.

12 I need to look it up, your Honor.

13 THE WITNESS: Protest or noting of checks.

14 THE COURT: Can you explain what dependency meant?

15 THE WITNESS: Prenatal care, child support.

16 THE COURT: And what did executive trials involve?

17 THE WITNESS: The lawsuits for collection drafts,
18 IOUs, so it can be understood.

19 THE COURT: Thank you very much.

20 Mr. Gomez.

21 BY MR. GOMEZ:

22 Q. Dr. Zambrano, why did you choose -- when did you become a
23 prosecutor, sir?

24 A. In 1994.

25 Q. Why did you make the decision to become a prosecutor in

DB7LCHE1

Zambrano - cross

1 1994?

2 A. It was an opportunity to investigate in depth and to avoid
3 cases remained unpunished and this is how I can contribute to
4 society.

5 Q. As a prosecutor was your work focused or specialized in a
6 particular area?

7 A. Could you please repeat the question?

8 Q. Yes. As a prosecutor, was your practice focused on a
9 particular area?

10 A. Initially I was appointed traffic prosecutor. Later, first
11 prosecutor, second prosecutor, deputy, and then lead
12 prosecutor. Then I was deputy, equivalent would be district
13 attorney, in the Napo Province, and alternate prosecutor in the
14 Sucumbios Province.

15 Q. What types of cases did you handle as a lead prosecutor?

16 A. At what time?

17 Q. You testified that you first started as a first prosecutor,
18 a second prosecutor, and ultimately in the position of lead
19 prosecutor.

20 When you were in the position of lead prosecutor, what
21 sorts of cases were you responsible for?

22 A. Exclusively criminal matters.

23 Q. Were they criminal matters that involved a higher degree of
24 charge or a higher penalty?

25 A. Much higher.

DB7LCHE1

Zambrano - cross

1 Q. Can you give us some examples?

2 A. On many occasions I made statements against the guerrillas
3 and even brought charges against the person who at that time
4 was the president's cousin and other very delicate cases.

5 Q. When you said president's cousin, who were you referring
6 to, sir?

7 A. Engineer Lucio Gutierrez was the president at that time.

8 Q. What sort of accusation did you make against that
9 gentleman?

10 MR. MASTRO: Objection, relevance.

11 THE COURT: Overruled.

12 A. Embezzlement, misuse of public funds.

13 Q. How was that matter resolved?

14 A. As a prosecutor, I render my accusatory document, but I do
15 not know as to how that was resolved.

16 Q. What sort of cases did you handle as deputy district
17 attorney in Napo?

18 THE COURT: I think we're beginning to press the
19 bounds of relevance pretty extensively, sir. It's very helpful
20 to get a sense of who Mr. Zambrano is and what his experience
21 is, but there is a limit.

22 MR. GOMEZ: I'll move on, your Honor.

23 Q. Dr. Zambrano, why did you -- when did you become a judge
24 for the first time?

25 A. In 2008.

DB7LCHE1

Zambrano - cross

1 Q. Why did you decide to become a judge?

2 A. It was a kind of promotion. I was involved in a selection
3 process and out of all the participants at the national level,
4 I came in second.

5 Q. And as a result of you coming in second, what occurred
6 next?

7 THE COURT: Sustained as to form. What happened next.

8 Q. Is this process that you described the method by which you
9 obtained employment as a judge for the first time, sir?

10 A. Yes.

11 Q. Dr. Zambrano, I want to direct your attention to the moment
12 before your second term presiding over the Lago Agrio case when
13 Judge Ordonez was in charge of the case.

14 Do you recall the specific grounds that Chevron
15 asserted for Judge Ordonez's recusal at that time?

16 A. That he had not ruled on many motions.

17 Q. Motions filed by who, sir?

18 A. By Chevron.

19 Q. Do you recall how many motions had not been acted upon at
20 that time?

21 THE COURT: I take it -- Mr. Mastro, you were rising
22 or not?

23 MR. MASTRO: I was going to object, your Honor.

24 THE COURT: Sustained.

25 I take it this is all a matter of record.

1 DB7LCHE1

Zambrano - cross

1 MR. GOMEZ: Your Honor, I'd like to use a document.
2 May I approach?

3 THE COURT: Yes. This is not marked, counselor, as
4 far as --

5 MR. GOMEZ: This is Defendant's Exhibit DX --

6 THE COURT: Forgive me, I misspoke.

7 MR. GOMEZ: -- 1561.

8 THE COURT: 1561.

9 MR. GOMEZ: Yes.

10 (Continued on next page)

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DB78CHE2

Zambrano - cross

1 MR. GOMEZ: For the record, the first three pages are
2 an English translation, page 4 purports to be a certification
3 of the translation, and pages 5, 6 and 7 are the same document
4 in Spanish.

5 Q. Dr. Zambrano, I would like to direct your attention to
6 pages 5, 6 and 7 of this document. Can you tell me if you
7 recognize it, sir?

8 THE COURT: Is there any dispute about authenticity
9 and about what it is?

10 MR. MASTRO: No, your Honor.

11 THE COURT: It's agreed between counsel that this is a
12 copy of a paper filed in the court in Lago Agrio, is that
13 right?

14 MR. GOMEZ: Yes, your Honor.

15 THE COURT: Mr. Friedman?

16 MR. BOOTH: Yes, your Honor.

17 THE COURT: Mr. Mastro?

18 MR. MASTRO: Yes, your Honor.

19 THE COURT: Next question.

20 Q. Dr. Zambrano, is this an order that you issued in the Lago
21 Agrio case?

22 A. This is a notification made by the clerk of an order, which
23 was issued in a separate notebook, which is a motion for
24 recusal of Judge Ordonez.

25 Q. Is that motion for recusal of Judge Ordonez in the Lago

DB78CHE2

Zambrano - cross

1 Agrio case, sir?

2 A. Yes. This was the basis for removing Judge Ordonez.

3 MR. GOMEZ: I would move this into evidence DX 1561.

4 THE COURT: Is there any objection?

5 MR. MASTRO: As long as it's not for the truth of the
6 matters asserted, we have no objection.

7 THE COURT: Received but not for the truth.

8 (Defendant's Exhibit 1561 received in evidence)

9 Q. Dr. Zambrano, I would like to direct your attention to the
10 second page of the Spanish, under a heading marked number 5, or
11 quinto. I would like you to read that section to yourself,
12 sir.

13 THE COURT: Is there a question?

14 Q. Sir, is it true that at this time Judge Ordonez had failed
15 to act on 47 briefs that Chevron filed between April and August
16 of 2010?

17 MR. MASTRO: Objection, your Honor.

18 THE COURT: What is the objection?

19 MR. MASTRO: Your Honor, relevance, and this is not
20 what we are supposed to do. The document speaks for itself.
21 It is in evidence. He asked the witness what it says. I don't
22 think that's a proper question.

23 THE COURT: Mr. Gomez.

24 MR. GOMEZ: The document is not in for the truth.

25 THE COURT: I know. There is a reason for that.

DB78CHE2

Zambrano - cross

1 MR. GOMEZ: I am asking the witness whether the
2 material stated in the document is true, whether he was the
3 person who issued this order, and so he should have knowledge
4 of that fact.

5 MR. MASTRO: Your Honor has already ruled that the
6 defense allegation about the number of motions filed in the
7 case is not relevant to a defense.

8 THE COURT: What is the relevance of it, Mr. Gomez?

9 MR. GOMEZ: I can address that at a side bar.

10 (Continued on next page)

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DB78CHE2

Zambrano - cross

1 (At the side bar)

2 MR. GOMEZ: Your Honor, we have heard testimony in
3 this case that in a year prior to this recusal Mr. Guerra, at
4 the insistence of Mr. Zambrano, had made approaches to Chevron
5 to fix the case. Here is a time in September of 2010 when
6 Judge Ordonez is presiding over the matter. The subsequent
7 judge who will necessarily have to take over is Judge Zambrano.
8 And Chevron is filing a motion to recuse Judge Ordonez, knowing
9 what I think this witness will establish that Judge Zambrano
10 would then assume the position and preside over the case.

11 THE COURT: How is he going to testify that's what
12 Chevron knew?

13 MR. GOMEZ: He will testify, I believe, because of the
14 position that he held in the court at the time that Judge
15 Zambrano was recused, that he would be the next in line -- once
16 Judge Ordonez was recused.

17 THE COURT: How does the answer to the question, Were
18 the facts stated in this order true, get you in that direction?

19 MR. FRIEDMAN: Can I say something?

20 THE COURT: Yes.

21 MR. FRIEDMAN: This also goes to another point, which
22 is that the -- I just lost my point. There was all this
23 backlog of motions, if you will, and if I recall it correctly,
24 Chevron is the one that --

25 THE COURT: I can't hear you, sir.

DB78CHE2

Zambrano - cross

1 MR. FRIEDMAN: Chevron is the one who asked that Judge
2 Ordonez be recused with this backlog of all these motions. The
3 fact that it's true that there was this backlog of all these
4 motions, and then he very promptly ruled on these motions, they
5 are arguing is some sort of impropriety on his part. This goes
6 back to earlier testimony in the trial.

7 THE COURT: The question that was put to the witness
8 doesn't have anything to do with whether he promptly ruled on
9 these motions.

10 MR. FRIEDMAN: I don't know where Mr. Gomez is going,
11 but it's relevant to that point.

12 THE COURT: The objection is sustained. I haven't
13 heard any good reason.

14 MR. MASTRO: We have the English translation. It's in
15 evidence as Plaintiff's Exhibit 1141 of the case that Mr. Booth
16 was questioning the witness about this morning.

17 THE COURT: Thank you.

18 MR. MASTRO: His DX 1544.

19 (Continued on next page)

DB78CHE2

Zambrano - cross

1 (In open court)

2 THE COURT: Next question.

3 BY MR. GOMEZ:

4 Q. Dr. Zambrano, when Chevron moved to recuse Judge Ordonez,
5 who would have been the next judge that would have taken over
6 presiding over this case?

7 MR. MASTRO: Objection to form.

8 THE COURT: Sustained.

9 Q. When Chevron moved to recuse Judge Ordonez, which judge
10 would have taken over the Lago Agrio case?

11 MR. MASTRO: Same objection.

12 THE COURT: Exactly the same question. Exactly the
13 same objection. Exactly the same ruling.14 Next. There are ways to prove what you're trying to
15 prove, if it's correct, but this isn't it.16 Q. Dr. Zambrano, according to the procedures in place at the
17 time that Chevron moved for Judge Ordonez's recusal, what
18 judge, if any, would have been assigned to the case upon his
19 recusal?

20 MR. MASTRO: Objection.

21 THE COURT: What is the objection?

22 MR. MASTRO: He is asking in the subjunctive.

23 THE COURT: Well, it's a conditional question.

24 Overruled.

25 MR. MASTRO: It's fine, your Honor.

DB78CHE2

Zambrano - cross

1 A. Me.

2 Q. Why?

3 A. Because I was the alternate president of the court. This
4 means that if the sitting president is not hearing the case, I
5 would then have to hear the case.

6 Q. Were the procedures that would have required you to hear
7 the case in Judge Ordonez's stead known to the public?

8 THE COURT: Sustained.

9 Q. Once you began to preside over the Lago Agrio case, did you
10 have an opportunity to rule on the outstanding motions that
11 Judge Ordonez had failed to act upon?

12 A. Yes.

13 Q. How did you do that?

14 A. That is included in the content of the corresponding order,
15 and in order to do that I had to review the records so that I
16 could then look into the relevance or not of the motion or
17 request.

18 Q. Were each of those motions unique?

19 THE INTERPRETER: I'm sorry.

20 Q. Were each of those motions unique?

21 A. They were motions or requests that were disguised as other
22 motions or requests. They were repetitive in different words.

23 Q. How long did it take you, upon review of these motions, to
24 act upon them?

25 MR. MASTRO: Objection. Relevance.

DB78CHE2

Zambrano - cross

1 THE COURT: Sustained.

2 Q. Dr. Zambrano, what is autos para sentencia?

3 A. It is the judge's decision in which he declares that the
4 evidentiary period has concluded, and he requests that the
5 record be sent to him in order to rule.

6 Q. Do you recall if prior to his recusal, Judge Ordonez issued
7 autos para sentencia in the Lago Agrio case?

8 MR. MASTRO: The record speaks for itself, your Honor.

9 THE COURT: Folks, that would be right, wouldn't it,
10 Mr. Gomez?

11 MR. GOMEZ: If the plaintiff will stipulate that that
12 was so, I can move on.

13 THE COURT: I don't know if they will. But the record
14 will show it one way or the other, right?

15 MR. MASTRO: We will stipulate to when that date was.

16 THE COURT: Let's move on.

17 Do you know what the date was?

18 MR. GOMEZ: I have a document that I was going to show
19 the witness.

20 THE COURT: Why don't you show it to Mr. Mastro
21 instead of taking all of this time.

22 MR. GOMEZ: For the record, I have handed Mr. Mastro
23 Defendants' Exhibit 1560.

24 MR. MASTRO: We have no objection to it being received
25 on the same basis as the others, not for the truth of the

DB78CHE2

Zambrano - cross

1 matters asserted.

2 THE COURT: Is that satisfactory?

3 MR. GOMEZ: Yes, your Honor.

4 THE COURT: Mr. Friedman.

5 MR. FRIEDMAN: Yes, your Honor.

6 THE COURT: Defendants' 1560 is received not for the
7 truth of the matter. Let's go.

8 (Defendant's Exhibit 1560 received in evidence)

9 Q. Dr. Zambrano, when you took over presiding the Lago Agrio
10 case on your second term, did you know whether Judge Ordonez
11 had issued an autos para sentencia by that time?

12 A. I don't recall.

13 Q. Sir, did anyone associated with Chevron ever express to you
14 at the time that Judge Ordonez was asked to be recused that
15 they would like you to replace Judge Ordonez?

16 MR. MASTRO: Objection, your Honor.

17 THE COURT: Ground.

18 MR. MASTRO: Form. Vagueness. Hearsay.

19 THE COURT: Overruled.

20 A. No.

21 Q. Did Chevron take any action to block you from presiding
22 over the Lago Agrio case after Judge Ordonez's recusal in
23 September 2010?

24 A. No.

25 Q. Before you began to preside over the Lago Agrio case in

DB78CHE2

Zambrano - cross

1 October 2012, do you know whether Chevron ever complained to
2 anyone about you as a judge?

3 MR. MASTRO: Objection. Hearsay. Speculation.
4 Vagueness.

5 THE COURT: Sustained on foundation grounds.

6 Q. Prior to you presiding over the Lago Agrio case October
7 2010, were you aware of any complaints by Chevron against you
8 for your conduct as a judge?

9 A. No.

10 Q. Did Chevron ever take any action to have you recused after
11 you began to preside over the Lago Agrio case in October 2011?

12 MR. MASTRO: Objection.

13 A. No.

14 Q. I want to turn your attention, sir, to the time period
15 after you issued the judgment, after you --

16 THE COURT: We will take our morning break now.

17 (Recess)

18 THE COURT: Mr. Gomez, how much longer do you expect
19 to be with the witness?

20 MR. GOMEZ: Probably another hour or so.

21 THE COURT: Then you, Mr. Mastro, how much longer with
22 the witness?

23 MR. MASTRO: Your Honor, we are going to finish him
24 before lunch. I am going to be brief.

25 THE COURT: If he goes more than an hour. From your

DB78CHE2

Zambrano - cross

1 lips to God's ears, both of you. That's all I can say.

2 Let's go, Mr. Gomez.

3 BY MR. GOMEZ:

4 Q. Judge Zambrano, I want to get a little bit more on the
5 subject of the OCP case.

6 Yesterday you had testified that as an appeals judge
7 with two other judges you dismissed that case. Do you remember
8 that testimony, sir?

9 A. Yes.

10 Q. Can you give us an explanation of the grounds by which you
11 decided to dismiss that case?

12 A. Yes.

13 Q. Please do so.

14 A. Yes. The plaintiffs reformed or modified the claim in the
15 hearing.

16 Q. What is the significance of that?

17 A. The law does not allow for a claim to be modified, and it
18 was dismissed for that reason.

19 Q. Now, sir, going to the time period after you were no longer
20 presiding over the Lago Agrio litigation, after you had issued
21 the judgment, did Chevron make any attempt to contact you?

22 A. Yes.

23 Q. Explain how that came about.

24 A. It was through Dr. Guerra.

25 Q. What did Dr. Guerra do in that respect?

DB78CHE2

Zambrano - cross

1 A. He said that Chevron was willing to give me a minimum of \$1
2 million or whatever I wanted.

3 Q. Did Mr. Guerra say this to you in person or over the
4 telephone?

5 A. In person.

6 Q. Approximately when did he make this statement to you, sir?

7 A. Well, most could have been the month of August 2012. He
8 handed me some documents, which made it apparent that a certain
9 Dr. Rivero, Andres Rivero, was an attorney for Chevron, and
10 wanted to speak to me.

11 Q. Where did you meet Mr. Guerra when he gave you these
12 documents?

13 A. He met me at the airport.

14 Q. When he gave these documents to you, did he say anything
15 else?

16 MR. MASTRO: Objection. Hearsay, your Honor.

17 THE COURT: It calls for a yes or no.

18 A. Would you please repeat the question?

19 MR. GOMEZ: Would the court reporter kindly read the
20 question back?

21 THE COURT: Yes.

22 (Record read)

23 A. Yes.

24 Q. What did he say?

25 MR. MASTRO: Objection. Hearsay.

DB78CHE2

Zambrano - cross

1 THE COURT: Mr. Gomez.

2 MR. GOMEZ: Your Honor, we have heard testimony from
3 Mr. Guerra that he was acting as an agent of Chevron at the
4 time, and under evidence rule 801(d)(2) we ask --

5 THE COURT: Please draw my attention to the transcript
6 where that was said, that he was acting as an agent for
7 Chevron.

8 Don't say anything, please, Mr. Zambrano. Wait.

9 (Pause)

10 THE COURT: Would one of you remind me what day
11 Mr. Guerra started to testify.

12 MR. FRIEDMAN: Your Honor, if we could do a side bar.

13 THE COURT: I would just like the answer first.

14 Last week, right?

15 MS. LITTLEPAGE: He started on October the 23rd.

16 MR. GOMEZ: Your Honor, I am going to withdraw that
17 question.

18 THE COURT: All right.

19 BY MR. GOMEZ:

20 Q. I am going to show the witness a document. This is
21 Defendants' Exhibit 92.

22 Dr. Zambrano, I am showing you what has been marked as
23 Defendants' Exhibit 92. The Spanish translation begins at page
24 131 of this 250 page exhibit.

25 Please turn to page 131, sir.

DB78CHE2

Zambrano - cross

1 THE COURT: This appears to correspond to page 2 of
2 the English.

3 MR. GOMEZ: Thank you.

4 Q. From pages 131, sir, through 135, what do you recognize
5 that to be?

6 MR. GOMEZ: For the record, the corresponding pages
7 are 2 through 6 in the English.

8 A. This is the sworn statement that I gave.

9 Q. Mr. Zambrano, if you will now turn to the page marked 138,
10 do you recognize that?

11 A. The portion that is in the upper center portion of the
12 page, I do recognize that.

13 Q. What do you recognize that to be, sir?

14 A. It is a business card that was inside the documents that
15 Dr. Guerra gave to me and that were from Mr. Andres Rivero.

16 Q. Are these the same documents --

17 THE COURT: Just a minute.

18 You say they were from Andres Rivero. How do you know
19 that?

20 THE WITNESS: Because Dr. Guerra told me that all
21 those documents were proof of the fact that Dr. Andres Rivero
22 was an attorney for Chevron, and in that folder there was also
23 this little card.

24 Q. Dr. Zambrano, do you recognize the rest of the documents
25 behind that copy of a business card, pages 139 through 250?

DB78CHE2

Zambrano - cross

1 THE COURT: We are now to have a recess so that he can
2 read 140 pages of material, is that the idea?

3 MR. GOMEZ: No.

4 THE COURT: What are we doing?

5 Q. Mr. Zambrano, are these documents familiar to you?

6 A. Yes.

7 Q. What do you identify them to be?

8 THE COURT: Before we do that, pages 141 to 250 are
9 all in English. Am I correct, Mr. Zambrano, you can't read any
10 of it, right?

11 THE WITNESS: Yes.

12 THE COURT: Go ahead, Mr. Gomez. Put your question.

13 Q. How do you recognize these documents, Dr. Zambrano?

14 A. Because they were highlighted in yellow.

15 THE INTERPRETER: I need to inquire, your Honor.

16 A. It was highlighted in yellow and different documents that
17 stated that he had acted on Chevron's behalf, representing
18 Chevron.

19 Q. You had testified earlier that Mr. Guerra provided you with
20 documents. Are these the documents, copies of the documents
21 that Mr. Guerra provided to you at the airport on or about
22 mid-August 2012?

23 A. Yes. These are copies because these ones are not
24 highlighted in yellow as the papers were which he had
25 highlighted, in which you would mainly see the name Andres

DB78CHE2

Zambrano - cross

1 Rivero, and he was matching it up with the business card which
2 was Andres Rivero, attorney for Chevron.

3 MR. GOMEZ: I ask that we move these documents into
4 evidence DX 92.

5 THE COURT: I'm sorry.

6 MR. GOMEZ: DX 92.

7 MR. MASTRO: Your Honor, we have no objection so long,
8 obviously, as it's not being offered for the truth.

9 THE COURT: It will be received not for the truth, but
10 just to clarify something.

11 Mr. Zambrano, you say that the documents Mr. Guerra
12 gave you on the occasion at the airport were highlighted in
13 yellow, right?

14 THE WITNESS: Yes. He had highlighted them.

15 THE COURT: Did you see him highlight them?

16 THE WITNESS: He gave them to me highlighted.

17 THE COURT: So somebody highlighted them.

18 Now, where are those highlighted documents today?

19 THE WITNESS: I had them.

20 THE COURT: Yes. But where are they today?

21 THE WITNESS: In Ecuador.

22 THE COURT: And they were among the documents you were
23 asked to bring here to the United States to testify, isn't that
24 true?

25 THE WITNESS: I have never been asked to bring

DB78CHE2

Zambrano - cross

1 documents here.

2 THE COURT: All right.

3 Now, the first several pages of the Spanish part of
4 this document is your, I think you called it sworn statement.
5 And then behind the page that has your signature, which is page
6 135, there is the big pile of documents, none of which is
7 highlighted, right?

8 THE WITNESS: The sworn statement was not highlighted.
9 This was mine.

10 THE COURT: Yes. Pages 136 to 250 are not
11 highlighted, right, not in a single place?

12 THE WITNESS: There are some like black things there,
13 and it is there which was highlighted. Because this is a copy
14 in black and white, it couldn't show in yellow.

15 THE COURT: Well, did you copy the highlighted pages
16 in Ecuador?

17 THE WITNESS: Yes.

18 THE COURT: What did you do with the copies?

19 THE WITNESS: I turned them over along with this sworn
20 statement.

21 THE COURT: To whom did you turn them over?

22 THE WITNESS: To attorney Pablo Fajardo.

23 THE COURT: So when you say here today that pages 136
24 to 250 -- I guess, 138 to 250 are documents that you were given
25 by Mr. Guerra at the airport, you're simply assuming that those

DB78CHE2

Zambrano - cross

1 documents are what you gave to Pablo Fajardo, is that true?

2 THE WITNESS: Yes.

3 THE COURT: You can't read them, right?

4 THE WITNESS: It was not necessary because Dr. Guerra
5 only wanted to show me that Dr. Andres Rivero had appearances
6 on behalf of Chevron, and that's why the words Chevron were
7 also highlighted.

8 THE COURT: I think the point is reasonably clear, at
9 least it is to me.

10 It is in evidence for what it is worth.

11 (Defendants' Exhibit 92 received in evidence)

12 Q. Mr. Zambrano, when Mr. Guerra gave these documents to you,
13 was it during that same meeting that he mentioned Chevron's
14 proposal to pay you a million dollars?

15 MR. MASTRO: Objection, your Honor.

16 THE COURT: Sustained.

17 Q. When did Mr. Guerra communicate to you Chevron's proposal
18 to pay you a million dollars?

19 MR. MASTRO: Objection, your Honor. Hearsay.

20 MR. GOMEZ: I am asking for a time.

21 THE COURT: Sustained.

22 Look, precision is extraordinarily important here, and
23 you are saying Chevron's proposal. Maybe it was Chevron's
24 proposal. Maybe it was Guerra's proposal independent of
25 Chevron. Let's stick to the facts. Let's not build into the

1 DB78CHE2

Zambrano - cross

1 question assumptions in the hope that sooner or later the
2 witness will buy in.

3 Q. Mr. Zambrano, when did Mr. Guerra communicate to you the
4 one million dollar proposal that you have described in your
5 testimony?

6 A. He said it to me at the airport.

7 Q. Did he say it to you at the airport at the same time in the
8 same meeting when he gave you these documents?

9 A. Yes.

10 Q. What else, if anything, did he say to you with regard to
11 the proposal that you have described?

12 MR. MASTRO: Objection. Hearsay.

13 THE COURT: What is the proof of agency?

14 MR. FRIEDMAN: Can we approach the bench on that, your
15 Honor?

16 THE COURT: Sure.

17 (Continued on next page)

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DB78CHE2

Zambrano - cross

1 (At the side bar)

2 MR. FRIEDMAN: We have recorded statements in evidence
3 from Mr. Guerra being interviewed by Chevron in June or July of
4 2012, in which they discuss wanting him to be a bridge to
5 Zambrano.6 MS. LITTLEPAGE: Mr. Rivero in his sworn deposition on
7 page 144 and 145 confirms that he, on behalf of Chevron, asked
8 Mr. Guerra to approach Mr. Zambrano to give Mr. Zambrano a
9 series of documents, including his business card, and to have a
10 discussion with Mr. Zambrano about finalizing the terms of a
11 cooperation agreement.12 MR. MASTRO: Your Honor, all that that testimony was
13 was that Mr. Rivero wanted to speak to Mr. Zambrano. So he was
14 providing documents that confirmed he had been an attorney who
15 represented Chevron.16 For agency purposes, it has to be someone acting
17 within the scope of the relationship. Guerra wasn't at that
18 point doing anything other than talking to Chevron and
19 considering gathering evidence.

20 THE COURT: Is the deposition in evidence?

21 MR. MASTRO: The Rivero deposition is not in our case.
22 They intend to offer portions of it.

23 THE COURT: Can I see it?

24 MS. LITTLEPAGE: Yes. I think it starts towards the
25 bottom of the page.

DB78CHE2

Zambrano - cross

1 THE COURT: Does anybody have a hard copy of this?

2 MR. MASTRO: We will get it for you.

3 If I could just say, Mr. Rivero also answered
4 questions about, and said absolutely not, was Mr. Guerra asked
5 to go to Mr. Zambrano with any offers of money. He said all
6 that was discussed with Guerra was I would like to meet with
7 Zambrano to ask him questions.

8 THE COURT: Let me see the deposition.

9 MR. MASTRO: Certainly, your Honor.

10 We are trying to find it in the back room, the hard
11 copy.

12 THE COURT: In the meantime, let's go to Mr.
13 Friedman's point. Show me the tape-recorded meeting where you
14 say which constitutes the authorization in your view.

15 MR. MASTRO: I just wanted to add, Guerra's witness
16 declaration of his direct in this case expressly says Chevron
17 did not authorize him to make any sort of financial proposal to
18 Mr. Zambrano.

19 MS. LITTLEPAGE: I have the page number, but I don't
20 have the actual document. It's page number 45.

21 THE COURT: Of what?

22 MS. LITTLEPAGE: Of the July 13, 2012 tape-recorded
23 conversation.

24 THE COURT: What exhibit is that?

25 MS. LITTLEPAGE: I do have that. That would be

DB78CHE2

Zambrano - cross

1 Exhibit DX 1361.

2 THE COURT: Is that in?

3 MS. LITTLEPAGE: Yes. It came in with Mr. Guerra.

4 THE COURT: 1361.

5 MS. LITTLEPAGE: 1361.

6 THE COURT: You're going to have to find me the
7 exhibit because the electronic version that you gave me of the
8 defense exhibits doesn't go that high.

9 Mr. Mastro, Ms. Littlepage, come up here, please.

10 MS. LITTLEPAGE: I also found where Mr. Guerra said it
11 in his trial transcript.12 "Did Chevron tell you you were the bridge to
13 Zambrano?"

14 THE COURT: That's fine.

15 Let's go back to 1361, which you tell me is the
16 transcript of the July 13 meeting.

17 MR. FRIEDMAN: The recorded statement, yes.

18 THE COURT: Transcription.

19 MS. LITTLEPAGE: 66. You are the bridge, the bridge
20 to Zambrano.21 THE COURT: Bridges are very nice, but is there
22 anything anywhere that says that Rivero authorized him to make
23 a proposal, a monetary proposal, to Zambrano about anything?24 MR. FRIEDMAN: No. I think what we have is
25 authorization that he go to Zambrano and try to get him to

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Zambrano - cross

1 cooperate with Chevron.

2 MR. MASTRO: This is Guerra's sworn statement on the
3 subject, which they could have cross-examined him on.

4 THE COURT: What am I looking at here on this
5 computer? This is his witness statement?

6 MR. MASTRO: Yes.

7 MS. NEUMAN: Paragraph 58.

8 MS. LITTLEPAGE: In his deposition on page 169, he
9 says, "I was the bridge to Zambrano."

10 THE COURT: And at paragraph 58 of his direct he said,
11 "That is why I took it upon myself to suggest to Mr. Zambrano
12 that he attempt to negotiate a substantial million dollar
13 payment from Chevron on his own behalf, even though Chevron
14 never suggested any such thing."

15 MS. LITTLEPAGE: But on page 66 of the July 13
16 transcript he says that, "You get yours when a deal is reached
17 with Zambrano." That's what Chevron told him. Chevron said,
18 "You get yours when a deal is reached with Zambrano."

19 MR. FRIEDMAN: I think our point, your Honor, is the
20 scope of the agency is they clearly asked him to make a deal
21 with Zambrano. It's within the scope of the agency under
22 801(d)(2). I don't want to characterize it. They sent him to
23 make a deal with Zambrano.

24 MS. LITTLEPAGE: He said in his trial testimony, "Did
25 Chevron tell you you will get yours when a deal is reached with

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Zambrano - cross

1 Zambrano?" "They did say that."

2 MR. MASTRO: Both Guerra and Rivero testified Guerra
3 was never authorized to make a financial proposal to Zambrano.
4 Guerra was asked to try and set up a meeting so Chevron can
5 talk to Zambrano which never happened.

6 THE COURT: Is there anything else that anyone wants
7 me to look at here?

8 MR. MASTRO: No, your Honor. I did want to say one
9 other thing. I was going to wait until this line was done.

10 The question that elicited the hearsay from this
11 witness about Guerra saying a million dollars was in a question
12 about what did Guerra do, not what did Guerra say. So I think
13 that part of the answer should be stricken as well. The
14 question elicited hearsay that shouldn't have been said because
15 it was a question.

16 We have the Rivero deposition here if your Honor wants
17 it. We will try and find the specific pages.

18 MS. LITTLEPAGE: It was not objected to.

19 MR. MASTRO: The question was what Guerra did, if you
20 want to read the question.

21 MS. LITTLEPAGE: I don't have the transcript.

22 THE COURT: Stop arguing.

23 MR. MASTRO: Sorry, your Honor.

24 THE COURT: I think what I will do is I will listen to
25 the testimony and I will defer ruling on whether it comes in

1 DB78CHE2

2 Zambrano - cross

3 for the truth. If at the end of the day I don't believe it
4 anyway, which might occur, it doesn't matter. If I believe it,
5 I will decide whether it's admissible against the plaintiff.

6 MR. MASTRO: Understood, your Honor. Thank you.

7 (Continued on next page)

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DB78CHE2

Zambrano - cross

1 (In open court)

2 THE COURT: I have decided to hear the testimony
3 without the determining whether it's admissible against Chevron
4 for the truth of the matter asserted. I will reserve on that
5 question. Depending on my judgment at the end of the trial as
6 to the credibility of the witnesses, it may be immaterial.

7 Let's proceed.

8 MR. GOMEZ: Your Honor, to get my bearings, may I have
9 the last two questions and answers.

10 THE COURT: Yes.

11 (Record read)

12 THE COURT: Go ahead.

13 Q. Can you answer that question, sir?

14 A. He even told me it was necessary, I could travel to the
15 United States in order to speak over there with Chevron's
16 representatives.

17 Q. How did you respond?

18 A. I was about to take my flight, and I left. I didn't say
19 anything to him absolutely.20 Q. Did you have any subsequent conversation with Mr. Guerra
21 about this subject?22 A. He insisted over the phone, and I would be evasive so that
23 he would not insist.

24 Q. When did he call you?

25 A. I don't recall the dates.

DB78CHE2

Zambrano - cross

1 Q. Approximately how much time passed between your meeting at
2 the airport and Mr. Guerra's first telephone call on this
3 subject?

4 A. About, perhaps, a week.

5 Q. Did he only call you once or more than once?

6 A. The last two times when he called me I definitely had to
7 talk to him firmly, and he didn't call me again anymore.

8 Q. How many total times did he call you on this subject?

9 A. About two times.

10 Q. Have you ever spoken to Andres Rivero?

11 A. Never -- oh, excuse me, yes. One time, but on the phone,
12 he said he was Andres Rivero.

13 Q. Approximately when did you have that conversation?

14 A. At the beginning of the year, in January.

15 Q. January 2012?

16 A. Of this year.

17 Q. January 2013?

18 A. Yes.

19 Q. What did you discuss with the person who identified himself
20 as Mr. Rivero on this call?

21 A. He told me he was Andres Rivero, that he was an attorney
22 for Chevron, that he was in Manta, that he wanted to talk to me
23 in person, that he knew that I was not alone at home, that we
24 could talk in a hotel or some other place, and that it was
25 important that they already had Dr. Guerra in the United

DB78CHE2

Zambrano - cross

1 States.

2 Q. Approximately how long did this telephone conversation
3 last?

4 A. It wasn't very long.

5 Q. Did you record this conversation?

6 A. Yes.

7 Q. How did you record the conversation?

8 A. I put something on my phone to record it because this phone
9 call included very indecorous proposals.

10 Q. Did you ever provide a copy of that recording to counsel
11 for the defendants in this case?

12 A. Yes.

13 Q. Is that recording attached to your written declaration
14 which we have identified during your testimony?

15 A. Yes.

16 MR. GOMEZ: Your Honor, we have the recordings marked
17 as Defendants' Exhibit 85.

18 THE COURT: First of all, is a transcription attached
19 in Defendants' Exhibit 92?

20 MR. GOMEZ: Defendants' Exhibit 84 is the
21 transcription. We have marked that. We have the recording on
22 an audio CD which we have marked. And what I would like to do
23 is to play the recording and have him authenticate the
24 recording.

25 THE COURT: It's in Spanish, right?

1 DB78CHE2

Zambrano - cross

1 MR. GOMEZ: Yes, it is.

2 THE COURT: You say he hasn't listened to it before?

3 MR. GOMEZ: I am not telling you that. I would like
4 him to authenticate it here in court and then offer it into
5 evidence.

6 THE COURT: You can play it for him over the lunch
7 break.

8 MR. GOMEZ: Thank you.

9 (Continued on next page)

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DB7LCHE3

Zambrano - cross

1 MR. GOMEZ: Thank you.

2 Q. Mr. Zambrano, did you ever --

3 THE COURT: The way this is normally done is that it's
4 played for the witness in advance. The witness initials the CD
5 or the recording so that it establishes it's the same thing.
6 That's the way it's normally done.

7 MR. GOMEZ: Understood. Thank you.

8 Q. Mr. Zambrano, turning to a different topic.

9 THE COURT: Excuse me. Before we leave there, I just
10 want to -- well, no, I'll leave it. Thank you.11 THE INTERPRETER: Your Honor, the interpreter would
12 like to propose a better rendering: unseemly proposals in the
13 previous answer.

14 THE COURT: Okay. Thank you.

15 MR. GOMEZ: Your Honor, may I move into evidence
16 Plaintiff's Exhibit 84, which is the transcription.17 THE COURT: Well, certainly not until you have the
18 recording in. I mean you can move it but it's overruled.
19 You're not going to get it in until you get the recording in.

20 Q. Mr. Zambrano, moving to a different topic.

21 THE COURT: The way you do this, Mr. Gomez, is you
22 authenticate the recording and then you authenticate the
23 transcription and then you, after the recording is in, you can
24 get the transcription in.

25 MR. GOMEZ: Understood, your Honor. Thank you.

DB7LCHE3

Zambrano - cross

1 Q. Turning to a different topic, Mr. Zambrano, did you ever
2 make any reports to the police in Ecuador related to the Lago
3 Agrio case?

4 THE COURT: The record should reflect there's a very
5 long pause going on.

6 A. Can you please clarify to what you are referring to?

7 Q. Did you ever contact the police in Ecuador regarding
8 surveillance of you and your companion?

9 MR. MASTRO: Objection, leading.

10 THE COURT: Sustained.

11 Q. Have you ever made any reports to the police, Mr. Zambrano,
12 on your behalf or your companion's behalf?

13 MR. MASTRO: Objection, relevance.

14 THE COURT: Sustained.

15 Q. Mr. Zambrano, after you issued the judgment in the Lago
16 Agrio case, did you ever come to notice anyone following you?

17 MR. MASTRO: Objection, relevance, leading.

18 THE COURT: Pardon me?

19 MR. MASTRO: Objection, relevance, leading.

20 THE COURT: Sustained.

21 MR. GOMEZ: Your Honor, may we have a side bar,
22 please?

23 THE COURT: No.

24 MR. GOMEZ: May --

25 THE COURT: Maybe when we break.

DB7LCHE3

Zambrano - cross

1 MR. GOMEZ: May I address the objection on relevance?

2 THE COURT: No. We've been up and down this mountain
3 so many times, Mr. Gomez, I'll hear what you have to say later.

4 MR. GOMEZ: I'll move on for the time being.

5 THE COURT: Not a good use of time.

6 MR. GOMEZ: Thank you.

7 Q. Mr. Zambrano, turning to a different topic, in response to
8 Mr. Mastro's questions, you testified that you secured your
9 current employment in April of 2013 and executed an employment
10 contract in May of 2013.

11 Do you remember that testimony, sir?

12 A. Yes.

13 Q. How did you apply for that position?

14 A. In the internet, well, I'm qualified as a contractor. And
15 in the portal of public acquisitions, there was an invitation
16 so that I could submit a bid regarding legal, as a legal
17 advisor. I made my bid and after a procedure that is carried
18 out, I was granted the contract.

19 Q. What do you mean by qualified contractor?

20 A. In the internet, well, not in the internet, but in the
21 website of for public state acquisitions, you register and you
22 offer your services as a contractor and all companies have
23 access to that information. And when they require a certain
24 service, they choose and they issue an invitation to the person
25 who has been selected so that one can then submit his bids.

DB7LCHE3

Zambrano - cross

1 Q. And what is the procedure that is used to select the
2 winning bid, if you know?

3 THE COURT: I think it might be useful to lay a
4 foundation of how he might know that.

5 Q. You referred in your testimony to after a procedure. What
6 did you mean by that?

7 THE COURT: Look, Mr. Gomez, I understand the effort.
8 If somebody applies for a civil service job in the state of New
9 York, the person can certainly say, for example, I took a test
10 and there was a procedure and I got the job, right? That does
11 not mean the person has any clue, let alone a clue based on
12 personal knowledge, of what the procedure was in the hiring
13 agency as to how they selected a candidate. That's the problem
14 with your question.

15 MR. GOMEZ: I'll ask a different question, your Honor.

16 THE COURT: Thank you.

17 Q. Mr. Zambrano, how were you notified that you were hired?

18 A. Through the internet.

19 Q. And did you have to interview for the position before you
20 were hired?

21 A. I received in my email the granting of the contract. And
22 after that, there is an interview to finalize the details.

23 Q. Did you participate in such an interview?

24 A. Yes.

25 Q. How many people did you meet?

DB7LCHE3

Zambrano - cross

1 A. The administrative manager, the manager from human
2 resources, and another person whom I don't recall.

3 Q. Now, you signed -- you executed an employment contract for
4 this position, correct?

5 A. Yes.

6 Q. Does that contract mention or make reference to the Lago
7 Agrio case?

8 A. No.

9 Q. Does that contract require you to give testimony on behalf
10 of the Republic of Ecuador in any case?

11 A. No.

12 Q. Was there any discussion during your interviews for the
13 position that you would be required to cooperate with the
14 Republic of Ecuador in litigation regarding the Lago Agrio
15 case?

16 A. No.

17 Q. Now, sir, you were supposed to appear for a deposition in
18 Lima, Peru in May of this year; is that correct?

19 MR. GOMEZ: Let me withdraw that, your Honor.

20 Q. Mr. Zambrano, you were asked to appear for a deposition in
21 Lima, Peru in May of 2013 in this case, correct?

22 A. Yes.

23 Q. Did you inform your employer that you had received that
24 request?

25 A. I just obtained the job and for that reason I could not

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Zambrano - cross

1 attend.

2 Q. What did you just obtaining employment have to do with you
3 being able to attend the deposition exactly?4 THE COURT: Could we go back to the question you asked
5 to which we've not had an answer yet, unless you're withdrawing
6 it.7 MR. GOMEZ: Will the court reporter please read back
8 the last question.9 THE COURT: The question was: Did you inform your
10 employer that you had received that request? I assume you
11 asked it because you'd like an answer.

12 MR. GOMEZ: Yes, your Honor. Thank you.

13 THE COURT: I'm curious too.

14 THE WITNESS: No. This was a personal matter.

15 Q. Do you have any knowledge whether your employer was aware
16 that your presence was requested in Lima for a deposition in
17 this case?

18 MR. MASTRO: Objection.

19 THE COURT: The objection is sustained. Calls for a
20 state of mind of someone else.21 Q. Did your employer or supervisors ever tell you that they
22 knew your appearance had been requested for a deposition in
23 Lima in this case?

24 A. No.

25 Q. You never attended that deposition, correct, Mr. Zambrano?

DB7LCHE3

Zambrano - cross

1 A. Yes.

2 Q. Did anyone at your employment ever ask you why you did not
3 attend your deposition in Lima?

4 A. No.

5 Q. Has anyone at your place of employment since May 2013 until
6 the present ever made any inquiry of you regarding your failure
7 to appear for a deposition in Lima?

8 MR. MASTRO: Objection. Asked and answered.

9 THE COURT: Overruled.

10 A. No.

11 Q. Turning to a different subject, you have identified in your
12 testimony, Mr. Zambrano, your written declaration.13 Has anyone paid you any money in exchange for signing
14 that declaration?

15 A. No.

16 Q. Has anyone representing the defendants in this case ever
17 offered to pay you money for your written declaration?

18 A. No.

19 Q. Have you received any money from anyone in exchange for
20 your written declaration in this case?

21 A. No.

22 Q. Has anyone paid you for the time you spent preparing your
23 declaration?

24 A. No.

25 Q. Has anyone paid you for the documents, copies of the

DB7LCHE3

Zambrano - cross

1 documents that were attached to your declaration?

2 A. No.

3 Q. Has anyone representing the defendants in this case ever
4 offered to pay you money for your testimony in this case?

5 A. No.

6 Q. Have you received any money from anyone in exchange for the
7 testimony you have given in this case?

8 A. No.

9 Q. Has anyone reimbursed you for your time to come to the
10 United States and testify in this case?

11 A. No.

12 Q. Has anyone paid you for your time to prepare to testify in
13 this case?

14 A. No.

15 Q. Mr. Zambrano, moving to a different topic, you've testified
16 that you issued orders and rulings in other cases during your
17 second term when you presided over the Lago Agrio case between
18 October 2010 and February 2011.

19 My question to you is: Can you please identify for me
20 the various types of orders that you issued in other cases
21 during that time period?

22 THE COURT: Didn't we cover this yesterday? Mr. Booth
23 asked and he said, well, mostly procedural. Didn't we cover
24 this?

25 MR. GOMEZ: Maybe I'll be more precise, your Honor.

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Zambrano - cross

1 Q. Mr. Zambrano, are you familiar with a minute order or razon
2 type of order?

3 A. Could you please repeat the question?

4 Q. Yes. Are you familiar with a type of order known as a
5 minute order or razon, R-A-Z-O-N?

6 A. I don't know if I am understanding you. You're asking me
7 if I know what a minute order is?

8 Q. Yes.

9 A. Yes.

10 Q. What is a minute order?

11 A. The minute order is the certification issued by the Court's
12 clerk that there should be a notification or for any other
13 reason and she's the one who certifies it.

14 Q. How would you describe that kind of order in terms of the
15 amount of work you need to do to issue such an order?

16 A. Depending of the issue at hand.

17 Q. Are minute orders considered extensive orders?

18 THE COURT: Sustained.

19 Q. Can you estimate for me the amount of time it might take
20 you to prepare a minute order?

21 A. Five minutes.

22 Q. Sir, do you know my client, Hugo Camacho, plaintiff in the
23 Lago Agrio case who is also a defendant in this case?

24 A. No.

25 Q. Do you know my other client, Javier Piaguaje, also a

1 DB7LCHE3

Zambrano - cross

1 plaintiff in the Lago Agrio case who is a defendant in this
2 case?

3 A. I don't know him.

4 Q. Did any plaintiff in the Lago Agrio case ever offer you
5 anything of value in exchange for you issuing a favorable
6 judgment to the plaintiffs?

7 A. No, nor would I ever allow it.

8 Q. Sir, did anyone who claimed to be acting on behalf of the
9 Republic of Ecuador ever offer you anything of value in
10 exchange for issuing a judgment favorable to the plaintiffs in
11 the Lago Agrio case?

12 A. No.

13 THE COURT: Mr. Gomez, what you're doing could be done
14 in two questions. Please do it.

15 Q. Dr. Zambrano, has the Republic of Ecuador offered or
16 granted you any immunity for any testimony regarding any matter
17 related to the Lago Agrio case?

18 A. No.

19 Q. Has the Republic of Ecuador offered or granted you any
20 immunity for any testimony you might give in this case?

21 MR. MASTRO: Objection. Asked and answered --
22 withdrawn.

23 A. No.

24 Q. Has the Republic of Ecuador offered or granted you
25 diplomatic immunity for this trip to Ecuador -- to the United

DB7LCHE3

Zambrano - cross

1 States?

2 THE COURT: Mr. Gomez, look. I've given you and your
3 colleagues great latitude and you're now abusing it, all right.4 MR. GOMEZ: Your Honor, I have one more question and
5 then we can deal with the recording.

6 THE COURT: Ask your question.

7 MR. GOMEZ: Break for lunch.

8 Q. Mr. Zambrano, has anyone representing the Republic of
9 Ecuador ever suggested to you that you would not be prosecuted
10 for anything you may testify to in this case?

11 A. No.

12 MR. GOMEZ: Your Honor, at this time I'd like to, if
13 we could, proceed with the break for lunch. I can take care of
14 the recording and --

15 THE COURT: Are you finished?

16 MR. GOMEZ: -- check my notes.

17 THE COURT: Are you finished with the witness but for
18 this issue related to the recording?

19 MR. GOMEZ: Yes, that and a proffer.

20 THE COURT: What's the proffer?

21 Well, I guess we'll get the witness out of the room
22 for that.

23 MR. GOMEZ: And that would be it.

24 THE COURT: All right. Mr. Zambrano, you can go to
25 lunch. You need to be back here at 2 o'clock.

DB7LCHE3

1 MS. FRIEDMAN: Your Honor, could I ask for permission
2 from Mr. Gomez to talk to Mr. Zambrano for the purpose of
3 playing that tape? That's the logistical issue we have.

4 THE COURT: Any objection?

5 MR. GOMEZ: No.

6 MR. MASTRO: No objection, your Honor. I assume
7 Mr. Gomez didn't.

8 THE COURT: I know, Mr. Gomez, you speak for
9 Mr. Mastro as if of one mind.

10 Any objection, Mr. Mastro?

11 MR. MASTRO: No, your Honor.

12 THE COURT: Okay. For that limited purpose,
13 Mr. Gomez.

14 Mr. Zambrano, you can go to lunch, and I'll continue
15 with the lawyers briefly.

16 THE WITNESS: Thank you.

17 (Witness not present)

18 MR. GOMEZ: Could we ask the witness to wait in the
19 hallway so that --

20 THE COURT: Ask the witness to wait in the hallway.

21 Okay. The proffer first.

22 MR. GOMEZ: Your Honor, had we been permitted to
23 question the witness with respect to surveillance, it is our
24 belief that the witness would have testified that he has
25 noticed persons following both him and his companion subsequent

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1 to his issuance of the judgment in Ecuador, that he has
2 reported his observations to the police, and, furthermore, and
3 these are similar -- this is similar to the declarations that
4 appear in his written declaration.

5 Furthermore, we would have probed him about his
6 arrival to the United States and the similar observations that
7 he made upon arrival to JFK when he came for testifying in this
8 case.

9 THE COURT: And this is relevant to what?

10 MR. GOMEZ: This is relevant --

11 THE COURT: And his competence to be able to figure
12 out whether he's being followed would be what?

13 MR. GOMEZ: His competence as to being followed would
14 be the description of the actions that unknown persons took
15 when he was entering in and out of the airport to confirm that
16 he was being followed and similar observations when he was in
17 Ecuador. He tested his observations is what would make him
18 competent to testify to this.

19 In terms of relevance, your Honor, we think it would
20 go to unclean hands.

21 THE COURT: Well, I don't. So that takes care of
22 that.

23 Moreover, your proffer went way beyond the question to
24 which I sustained an objection, but, in any case, that's where
25 we are.

DB7LCHE3

1 Now, there was another issue as I remember, was there,
2 or am I just reliving this one because it's --

3 MR. MASTRO: I think the other issue, your Honor, was
4 the one where you agreed to take the testimony and you'll
5 decide later whether it's --

6 THE COURT: So we've covered this all for now. Is
7 that it?

8 MR. MASTRO: Yes, your Honor.

9 MR. GOMEZ: Yes, your Honor.

10 THE COURT: Okay. So 2 o'clock. And I'll see you
11 then.

12 MR. MASTRO: Thank you, your Honor.

13 THE COURT: Thank you.

14 Let me add one thing to what I said. Obviously,
15 there's a question as to whether the witness is in a position
16 actually to say that he was being followed. But passing over
17 that and assuming that he would say that, there's nothing to
18 connect it to anybody, nothing whatsoever.

19 And even if there were, I ruled in a decision reported
20 at 2011 WL 3628843 with respect to the unclean hands defense.
21 I recognize that was in the Salazar case. The pleading to
22 which it relates is the same pleading in this case. This was
23 never a part of that pleading in any way. Of course, I
24 understand the events are subsequent.

25 But the key point is that both sides argued that in

DB7LCHE3

1 order to be pertinent or sufficient for unclean hands purposes,
2 the conduct has to have an immediate and necessary relation to
3 the equity that the plaintiff seeks in respect of the matter in
4 litigation. I see no sufficient relationship between any
5 following of this witness either in Ecuador or in New York,
6 where, as far as I know, it is perfectly lawful, and the
7 question of whether a judgment, assuming it was obtained by
8 fraud, is enforceable or whether equitable relief ought to be
9 granted in relation to all of that. So this is just something
10 that has no legitimate bearing in this case.

11 Mr. Friedman, what's on your mind?

12 MS. FRIEDMAN: Your Honor, if I could just mention as
13 to the Ecuadorian surveillance, that relates to the pressure on
14 judges. He was still -- there's accusations against him after
15 he issued this judgment. There was surveillance of him after
16 he issued the judgment and that's -- the pressure on judges --
17 that's the connecting.

18 THE COURT: Look.

19 MS. FRIEDMAN: I just wanted to say that on the
20 record.

21 THE COURT: Your view is you made a complaint to the
22 Ecuadorian police. Let them deal with it.

23 MR. MASTRO: Thank you, your Honor.

24 (Luncheon recess)

25 (Continued on next page)

DB78CHE4

Zambrano - cross

1 AFTERNOON SESSION

2 2:10 p.m.

3 THE COURT: Mr. Gomez.

4 MR. GOMEZ: During the break, with the assistance of
5 Mr. Reed Brodsky, counsel for the plaintiff, the witness
6 listened to the audio recording, authenticated it. He
7 initialed the CD that he listened to, and, also, he initialed
8 the transcript, which he followed along as he heard the
9 recording authenticating that as well.

10 I offer these up as Defendants' Exhibit 84 and
11 Defendants' Exhibit 85, which have already been provided to the
12 plaintiffs.

13 THE COURT: Any objection?

14 MR. MASTRO: No objection.

15 THE COURT: Is it stipulated they are what they are
16 said to be?

17 MR. MASTRO: Yes, it is, your Honor.

18 THE COURT: Mr. Friedman.

19 MR. FRIEDMAN: Yes, your Honor.

20 THE COURT: Mr. Gomez.

21 MR. GOMEZ: Yes, your Honor.

22 THE COURT: They are received.

23 (Defendants' Exhibits 84 and 85 received in evidence)

24 MR. GOMEZ: With that I pass along the witness.

25 THE COURT: Redirect, Mr. Mastro.

DB78CHE4

Zambrano - cross

1 MR. MASTRO: Just before I begin, Mr. Friedman did
2 produce a letter that was given by a lawyer to Mr. Zambrano in
3 connection with his visa application. I would like to mark it
4 as an exhibit for these proceedings and the parties are willing
5 to stipulate that it is a letter that was produced in regard to
6 this witness.

7 THE COURT: This is plaintiff's exhibit what?

8 MR. MASTRO: Plaintiff's Exhibit 6407. It is a letter
9 from Pablo Fajardo to the embassy, dated October 7, the U.S.
10 Embassy.

11 THE COURT: Does the defense stipulate that the letter
12 is, in fact, a letter from Mr. Fajardo to the embassy?

13 MR. FRIEDMAN: We do.

14 MR. GOMEZ: Yes.

15 THE COURT: Any objection to its receipt?

16 MR. FRIEDMAN: No.

17 MR. GOMEZ: No.

18 THE COURT: It's received. Pass it up.

19 (Plaintiff's Exhibit 6407 received in evidence)

20 THE COURT: Let's proceed.

21 REDIRECT EXAMINATION

22 BY MR. MASTRO:

23 Q. Mr. Zambrano, before just the break, you were explaining to
24 Mr. Gomez how you applied for your current job at the public
25 company Refinery of the Pacific. Do you recall that testimony,

DB78CHE4

Zambrano - redirect

1 sir?

2 A. Yes.

3 Q. Sir, you said that you had to go online and fill out a
4 proposal for the job, correct?

5 A. No.

6 Q. How did you apply for the job, Mr. Zambrano?

7 A. I'm already registered on the Internet at the portal, which
8 is INCOP. That is the portal for public acquisitions.9 Q. It is the portal for public jobs, and you go on that portal
10 to apply for a public job, right?

11 A. No.

12 Q. What kind of jobs does that portal that you apply for?

13 A. One does not apply for positions by that portal. One
14 registers at that portal, and then the entire public has access
15 to that portal and can look at the services that one offers,
16 and that is how professional services are then retained.17 Q. These are professional services for public sector jobs,
18 correct, sir?

19 A. No.

20 Q. Refinery of the Pacific, you are on the portal potentially
21 to get a job at the Refinery of the Pacific, correct?22 A. I did not understand that question. Could you please
23 repeat it?24 Q. I will rephrase it, and I just want to cut right to the
25 chase.

DB78CHE4

Zambrano - redirect

1 On this portal you had to fill out information about
2 your background, correct?

3 A. Previously, of course.

4 Q. And you filled out that information about your background
5 after you ceased to be a judge, correct?

6 A. No.

7 Q. When you were trying to get the job at Refinery of the
8 Pacific, did you have to disclose any additional information
9 about your background in connection with that job application?

10 A. No.

11 Q. Did you ever disclose to anyone at Refinery of the Pacific
12 that you had been a judge before you got the job?

13 A. No.

14 Q. So you didn't disclose to anybody at Refinery of the
15 Pacific that you were removed from your judgeship by the
16 judicial council, is that your testimony?

17 A. No.

18 Q. When you had your interview --

19 THE COURT: It is his testimony? It's not his
20 testimony? What are we doing here?

21 MR. MASTRO: Sorry, your Honor.

22 Q. Mr. Zambrano, at any point in the job application process
23 at Refinery of the Pacific, did you disclose to anyone at
24 Refinery of the Pacific that you had been removed from your
25 judgeship by the judicial council?

DB78CHE4

Zambrano - redirect

1 A. No.

2 THE COURT: Mr. Mastro, I apprehend the possibility
3 that the use of the word "job" may be rendering this
4 examination less than entirely useful.

5 MR. MASTRO: I understand. I am going to move on.

6 Q. Mr. Zambrano, when Mr. Booth was asking you questions, he
7 asked you about what happened to your notes and documents when
8 you were working on the Lago Agrio Chevron judgment. Do you
9 recall those questions, sir?

10 A. Yes.

11 Q. You told him that you kept in your possession those notes
12 and those series of documents approximately for about a year.
13 After that I discarded them, it was no longer necessary for me
14 to have it in my possession, end quote. Do you recall that
15 testimony?

16 A. Yes.

17 Q. So that would mean you discarded those notes and documents
18 sometime in February 2012, correct, sir?

19 A. No.

20 Q. When, approximately, did you discard them in 2012, sir?

21 A. I don't recall.

22 Q. Sir, you're the judge who certified the Lago Agrio Chevron
23 judgment to go up on appeal in mid-2011, correct, sir?

24 A. No.

25 Q. Sir, did you ever see any of Chevron's appellate briefs

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Zambrano - redirect

1 during 2011 appealing the Lago Agrio Chevron judgment?

2 A. Yes.

3 MR. MASTRO: Your Honor, may I approach the witness?

4 THE COURT: You may.

5 MR. MASTRO: I am showing the witness what has been
6 marked as Plaintiff's Exhibit 6408, both the English and the
7 Spanish language version of Chevron's appeal brief, dated July
8 2011.

9 Q. Sir, do you recognize this as a copy of Chevron's appeal
10 brief?

11 A. No.

12 Q. Sir, you read the appellate decision issued on January 3,
13 2012, affirming your Lago Agrio Chevron judgment, correct?

14 A. Can you please repeat that question?

15 Q. At the time the appellate court affirmed your Lago Agrio
16 Chevron judgment on January 3, 2012, did you read the appellate
17 ruling affirming your judgment?

18 A. No.

19 THE COURT: Did you ever read it?

20 Q. Did you ever read the appellate decision?

21 A. No.

22 Q. Sir, did you disclose to anyone at Refinery of the Pacific
23 at any time that you had been removed from your judgeship by
24 the judicial council?

25 A. No.

DB78CHE4

Zambrano - redirect

1 Q. Sir, do you have a copy of your current employment
2 contract?

3 A. Yes.

4 Q. Do you have any other documents relating to your current
5 employment and how you got that employment?

6 A. In Ecuador.

7 Q. Sir, you were served with a subpoena to produce documents
8 at this trial, correct?

9 A. No.

10 Q. Did I not serve you with a subpoena at your deposition to
11 bring documents -- strike that.

12 Do you recall that I gave you a subpoena in English
13 and in Spanish at your deposition to produce documents in
14 connection with this trial?

15 A. That was in English.

16 Q. You were also served the next day with a document subpoena
17 in Spanish, correct, sir?

18 A. False.

19 MR. MASTRO: Your Honor, there is a paragraph 22 that
20 asks for all documents relating to his current employment.

21 THE COURT: Let's not get ahead of ourselves.

22 Just a minute. The transcript of the deposition on
23 November 2, at page 142, appears to reflect the service of the
24 subpoena in English and in Spanish. The witness was asked
25 whether he saw what had just been handed to him. He said he

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Zambrano - redirect

1 was becoming aware of it. It's extensive document. I would
2 have to read it. And it goes on on the next page.

3 Can't counsel stipulate at least that he was served
4 with the subpoena at the deposition in English and in Spanish?

5 MR. BOOTH: Absolutely. And he was at the deposition
6 after he came to New York, in New York, and he has not been
7 home since, and he was given a version of the subpoena in
8 English and in Spanish.

9 THE COURT: So stipulated, Mr. Gomez?

10 MR. GOMEZ: Yes.

11 THE COURT: Go ahead, Mr. Mastro.

12 MR. MASTRO: My only request, Mr. Zambrano, is that
13 any documents that you have that are responsive relating to
14 this case, to your current employment, that you produce those
15 through the attorneys for the defendants so that we have them
16 available to us at this trial when you return to Ecuador.

17 Thank you, sir.

18 THE COURT: Just a minute, Mr. Mastro.

19 There is a long dialogue going on between the witness
20 and the interpreter. I would like to know what it is.

21 THE INTERPRETER: The interpreter will state that the
22 interpreter was interpreting into Spanish what Mr. Mastro just
23 said.

24 THE COURT: What did Mr. Zambrano say to the
25 interpreter?

DB78CHE4

Zambrano - redirect

1 THE INTERPRETER: This is the second interpreter. I
2 added --

3 THE COURT: It was you? Forgive me.

4 There are two interpreters next to the witness, one
5 standing, one sitting.

6 BY MR. MASTRO:

7 Q. Mr. Zambrano, will you produce documents you have in your
8 possession when you get back to Ecuador that are responsive to
9 the subpoena, give them to the defendants' lawyers so that they
10 can be used here at this trial?

11 MR. BOOTH: Objection, your Honor. Form.

12 THE COURT: Overruled.

13 A. I don't know what documents you're requesting. If you're
14 asking me for the contract, I can give you that.

15 Q. Sir, simple question. Mr. Zambrano, the subpoena you
16 received at your deposition requests that you produce documents
17 in your possession in a number of categories. I am asking you
18 whether, when you get back to Ecuador, you will review your
19 records and produce to us here in New York any documents you
20 have that are responsive to the requests in the subpoena.

21 A. I cannot.

22 Q. Mr. Zambrano, I am going to ask you now some questions
23 about Mr. Guerra.

24 Do you recall Mr. Booth asking you about Mr. Guerra
25 helping you draft orders in some of your cases during your

DB78CHE4

Zambrano - redirect

1 second term on the Chevron case while you were working on the
2 Lago Agrio Chevron judgment?

3 A. Yes.

4 Q. How many cases did Mr. Guerra help you draft orders on
5 during the period October 2010 through mid-February 2011?

6 A. I don't recall.

7 Q. How many days in October 2010 did Mr. Guerra work helping
8 you draft orders in your other cases besides the Chevron case,
9 approximately?

10 A. I don't know.

11 Q. How about in November, how many days did he help drafting
12 orders for you in November, approximately?

13 A. I don't know.

14 Q. Is it the same answer for December, January and February,
15 sir?

16 A. Yes.

17 Q. He worked many days helping you draft orders during that
18 period, October 2010 through mid-February 2011, correct, sir?

19 MR. BOOTH: Objection. Form.

20 THE COURT: Overruled.

21 A. I don't know.

22 Q. You told Mr. Booth that Mr. Guerra was in a very delicate
23 financial situation. Do you recall that testimony, sir?

24 A. Yes.

25 Q. How much did you pay Mr. Guerra for helping you during that

DB78CHE4

Zambrano - redirect

1 period, October 2010 through February 2011, in drafting orders?

2 MR. GOMEZ: Objection. Asked and answered.

3 THE COURT: Overruled.

4 A. Nothing.

5 Q. Sir, you say that Mr. Guerra worked only on your other
6 cases during that period, October 2010 to mid-February 2011,
7 not on the Lago Agrio Chevron case, correct?

8 MR. BOOTH: Objection. Compound.

9 THE COURT: Rephrase it.

10 MR. MASTRO: Certainly.

11 Q. Mr. Zambrano, Mr. Guerra helped draft orders on your other
12 cases besides the Chevron Lago Agrio case between October 2010
13 and mid-February 2011, correct, sir?

14 A. No.

15 MR. GOMEZ: Objection. Asked and answered.

16 THE COURT: Overruled.

17 A. No.

18 Q. Did Mr. Guerra help you draft the Lago Agrio Chevron
19 judgment between October 2010 and February 2011, sir?

20 A. Could you please repeat the question? And may the
21 interpreter speak a little bit louder.

22 Q. Mr. Zambrano, isn't it a fact that Mr. Guerra had a
23 master's in international environmental law, to your knowledge?

24 A. I don't know.

25 Q. Are you aware, sir, that Mr. Guerra studied environmental

DB78CHE4

Zambrano - redirect

1 law as part of his law studies?

2 A. No.

3 Q. Sir, Mr. Booth asked you whether anyone had influenced you
4 in any way in connection with your deciding the Lago Agrio
5 Chevron case. Do you remember that, sir?

6 A. Yes.

7 Q. And it's your testimony that you were unaware President
8 Correa supported the Lago Agrio plaintiffs' case, correct, sir,
9 before you issued the Lago Agrio Chevron judgment?

10 MR. BOOTH: Objection. Asked and answered several
11 times.

12 THE COURT: I am very sympathetic to that objection,
13 but the fact is that there have been a number of occasions when
14 the witness has answered identical questions in absolutely
15 irreconcilable ways. So I am going to permit it. It happened
16 within the last five minutes.

17 A. No.

18 Q. You were aware that President Correa supported the Lago
19 Agrio plaintiffs' case before you issued the Lago Agrio Chevron
20 judgment?

21 A. No.

22 Q. Sir, you read the parties' --

23 THE COURT: You see Mr. Booth.

24 Go ahead.

25 MR. MASTRO: May I approach the witness?

DB78CHE4

Zambrano - redirect

1 THE COURT: Yes.

2 Q. Now, Mr. Zambrano, I am showing you what has been marked as
3 Plaintiff's Exhibit 6405, and I will represent to the Court
4 that it is excerpts from Chevron's alegato in the Lago Agrio
5 Chevron case.

6 Mr. Zambrano, you know what an alegato is, correct?

7 A. Yes.

8 Q. You know that an alegato is a party's closing written
9 argument in a case, correct?

10 A. No.

11 Q. Tell the Court what an alegato is, sir.

12 A. It is a statement of position by one of the parties
13 regarding a specific point that is in dispute in that
14 litigation.

15 Q. So, sir, you read the parties' alegatos in the Chevron case
16 before you issued the Lago Agrio Chevron judgment on February
17 14, 2011, correct?

18 A. Yes.

19 Q. It would have been improper for you under Ecuadorian law
20 not to have read the parties' alegatos before you issued the
21 Lago Agrio Chevron judgment, correct?

22 MR. BOOTH: Objection. Form.

23 THE COURT: Overruled.

24 A. Could you please repeat the question?

25 Q. It would have been improper under Ecuadorian law for you

DB78CHE4

Zambrano - redirect

1 not to have read the parties' alegatos before you issued the
2 judgment in the Lago Agrio Chevron case, correct, sir?

3 A. No.

4 Q. But you did read those alegatos in the Chevron case,
5 correct, sir, before you issued your judgment?

6 A. Yes.

7 Q. So you know that in Chevron's -- strike that.

8 So you knew before you issued the Lago Agrio Chevron
9 judgment from Chevron's alegato that President Correa and other
10 government officials have repeatedly offered their public
11 support for the Lago Agrio plaintiffs, didn't you, sir?

12 MR. BOOTH: Objection. Form. The document speaks for
13 itself.

14 THE COURT: Overruled.

15 He said earlier that he had no information on this
16 subject. It's appropriate cross.

17 A. No.

18 Q. Sir, you knew from page 12 of Chevron's alegato --

19 THE COURT: You got your answer. Is there any
20 objection to the document being offered not for the truth of
21 the matter but for what it says?

22 MR. BOOTH: There is no objection to the entire
23 alegato, not just pieces.

24 THE COURT: Do you have it, Mr. Mastro?

25 MR. MASTRO: We can enter the entire alegato. I am

DB78CHE4

Zambrano - redirect

1 only going to refer to three or four pages, but we will enter
2 the entire alegato.

3 THE COURT: So we will have as Plaintiff's 6405 the
4 entire alegato, English and Spanish. It is stipulated among
5 all counsel that this exhibit, which will be provided in due
6 course here, is the alegato and that it's admissible.

7 Correct, Mr. Gomez?

8 MR. GOMEZ: Not for the truth.

9 THE COURT: Not for the truth.

10 MR. GOMEZ: Yes.

11 THE COURT: Mr. Booth.

12 MR. BOOTH: Yes, your Honor.

13 THE COURT: Mr. Mastro.

14 MR. MASTRO: Yes, your Honor.

15 THE COURT: Received.

16 (Plaintiff's Exhibit 6405 received in evidence)

17 BY MR. MASTRO:

18 Q. Mr. Zambrano, you knew from page 12 of Chevron's alegato,
19 that you say you read before the Lago Agrio Chevron judgment
20 issued, that, quote, President Correa and other government
21 officials have repeatedly offered their public support for the
22 plaintiffs.

23 THE COURT: Mr. Mastro, first of all, I think you mean
24 to refer to 109. But in any case, it's right there.

25 MR. MASTRO: I simply wanted to point out to the

DB78CHE4

Zambrano - redirect

1 Court --

2 THE COURT: I have got it.

3 MR. MASTRO: Multiple pages of the alegato.

4 Q. I ask you one last time before you end your testimony here
5 today. Isn't it a fact that you knew when you issued the Lago
6 Agrio Chevron judgment that President Correa and his government
7 supported the Lago Agrio plaintiffs' case and wanted them to
8 win?

9 MR. BOOTH: Objection. Asked and answered. Compound.

10 THE COURT: I think it appropriately in this
11 circumstance goes to credibility. He is effectively being
12 given a last chance.

13 A. No.

14 MR. MASTRO: I have no further questions for this
15 witness.

16 THE COURT: Thank you.

17 Mr. Booth, anything further for the witness.

18 MR. BOOTH: Yes, your Honor.

19 RECROSS-EXAMINATION

20 BY MR. BOOTH:

21 Q. Hello, Dr. Zambrano.

22 Just a moment ago you were asked a question if
23 Dr. Guerra helped draft or helped you in preparing drafts of
24 orders in other cases for you.

25 MR. BOOTH: Let me ask a better question.

DB78CHE4

Zambrano - recross

1 Q. Did Dr. Guerra ever draft orders for you in any case?

2 A. Never.

3 Q. Did Dr. Guerra ever assist you by preparing drafts of
4 orders for you to then use in your case?

5 A. Yes.

6 Q. The cases where Dr. Guerra would have helped you by
7 providing drafts for you to then use in those cases, did he
8 ever do that for you in the Chevron case?

9 A. Never.

10 Q. The alegato that you were just discussing, the Chevron
11 alegato, as judge in the Chevron case, were you required to
12 accept what either party argued to you in an alegato as being
13 true?

14 A. No.

15 MR. BOOTH: No more questions. Thank you.

16 THE COURT: Mr. Gomez.

17 MR. GOMEZ: No more, your Honor.

18 THE COURT: Thank you.

19 Mr. Mastro.

20 MR. MASTRO: Nothing further for this witness, your
21 Honor.

22 THE COURT: Mr. Zambrano, this completes your
23 testimony for the moment. You have, I gather, been served with
24 a subpoena that it imposes legal obligations upon you. It may
25 be necessary for you to appear again in connection with that

DB78CHE4

Zambrano - recross

1 subpoena. Subject to all of that, you may now go.

2 THE WITNESS: Thank you.

3 THE COURT: Thank you.

4 (Witness excused)

5 THE COURT: Next witness.

6 MR. MASTRO: Chevron calls Professor Keith Rayner.

7 KEITH RAYNER,

8 called as a witness by the plaintiff,

9 having been duly sworn, testified as follows:

10 THE DEPUTY CLERK: State your name and spell your last
11 name for the record.

12 THE WITNESS: My name is Keith Rayner, R-A-Y-N-E-R.

13 MR. MASTRO: Your Honor, may I approach the witness?

14 THE COURT: You may.

15 MR. MASTRO: I am handing the witness what has been
16 marked as Plaintiff's Exhibit 4200. It is the revised and
17 supplemental declaration of Keith Rayner, Ph.D.

18 DIRECT EXAMINATION

19 BY MR. MASTRO:

20 Q. Dr. Rayner, is this a copy of your revised and supplemental
21 declaration in this case?

22 A. Yes, it is.

23 Q. Can I ask you to please turn to the last page, not the page
24 19, the lovely demonstrative. I am referring to page 17 of
25 your declaration, the last page of your declaration. Do you

1 DB78CHE4

Rayner - direct

1 see that, sir?

2 A. Page 19.

3 Q. Is that your signature, sir?

4 A. Page 17. Yes, it is.

5 Q. Was this revised and supplemental declaration true and
6 correct at the time you executed it?

7 A. Yes.

8 Q. Is this declaration true and correct today?

9 A. Yes.

10 Q. Did you also prepare what has been marked 4200A, the very
11 last page, page 19, this demonstrative?

12 A. Yes.

13 MR. MASTRO: I will identify for the record the
14 demonstrative entitled, "Judge Zambrano could not have read the
15 Lago Agrio record."

16 Q. Is that a true and correct copy of your demonstrative
17 attached to this exhibit?

18 A. Yes.

19 MR. MASTRO: I offer Plaintiff's Exhibit 4200 and
20 4200A into evidence as direct testimony of Professor Rayner.
21 And I am prepared to turn over the witness.

22 THE COURT: Any objections?

23 MR. BOOTH: No, your Honor.

24 MR. GOMEZ: None, your Honor.

25 THE COURT: They are received.

DB78CHE4

Rayner - direct

1 (Plaintiff's Exhibits 4200 and 4200A received in
2 evidence)

3 MR. MASTRO: Thank you, your Honor.

4 Thank you, Professor.

5 CROSS-EXAMINATION

6 BY MR. BOOTH:

7 Q. Good afternoon, Dr. Rayner. My name is Rainey Booth.

8 Dr. Rayner, how much have you been paid to date for
9 your work on this case?

10 A. To date I have received about \$11,000.

11 Q. Do you have any bills outstanding in this case for work you
12 have done?

13 A. Yes.

14 Q. How much?

15 A. About 30,000.

16 Q. To orient us, can you look at, I guess, the attachment at
17 the back of your report.

18 The phrase, "Judge Zambrano could not have read the
19 Lago Agrio record." When you used the term "could not have
20 read" there, can you explain how you're using the term "read"?

21 A. Sure. I am using the term read to mean the standard
22 definition of reading, that one reads and understands the words
23 in the text with a good level of comprehension.

24 Q. If I understand your report, the way you approached this
25 issue that you looked at was whether Judge Zambrano could have

DB78CHE4

Rayner - cross

1 read and understood all of the material in the record; is that
2 the way you approached the question?

3 A. Yes.

4 Q. By all the material, did you mean all the text materials as
5 opposed to photographs?

6 A. I meant primarily the text, although I think the
7 photographs, tables, graphs would take quite a bit of
8 processing to comprehend as well.

9 Q. In doing your analysis, did you read the entire Ecuadorian
10 Lago Agrio record?

11 A. There are two reasons why I didn't. May I?

12 Q. You may.

13 A. The first is I wasn't asked to read it. I was asked to
14 evaluate how many words were in the document.

15 Second, if I did read it, it would take me a year and
16 a half to read it reading eight hours a day. It's a long
17 record.

18 Q. So your answer is, no, you did not, is that right?

19 A. I did not read it, and I explained why.

20 Q. What you just told us about how long it would have taken
21 you, that's your opinion based on the assumptions you made, is
22 that correct?

23 A. Based on the assumptions of normal reading rates and
24 comprehension.

25 Q. Is it fair to say that in this case, you were asked to form

DB78CHE4

Rayner - cross

1 an opinion on a particular issue by the attorneys for Chevron,
2 is that fair?

3 A. Yes.

4 Q. Is it fair to say that you decided what would be the best
5 way to approach that issue in terms of doing an analysis, is
6 that fair?

7 A. Yes.

8 Q. In forming your opinion in this case, did you attempt to
9 determine what would have been the best way for Judge Zambrano
10 to have approached the Ecuadorian record to form his opinions
11 in that case?

12 A. My understanding is that Judge Zambrano was supposed to
13 read the record.

14 Q. That wasn't my question. I appreciate your answer.

15 Did you, as an expert in this field, did you make any
16 attempt to determine in your own mind what would have been the
17 best way for Judge Zambrano to approach the record to decide
18 the issues he had to decide in the Ecuadorian court below?

19 A. No.

20 Q. The primary focus of your work outside the courtroom, can
21 you briefly describe it for us, please?

22 A. I am a professor at the University of California, San
23 Diego. I teach courses on the psychological of language,
24 psychological of reading, and cognitive psychological, and I do
25 a lot of research on reading processes and language processes.

DB78CHE4

Rayner - cross

1 Q. In terms of your primary focus in the work you do, does it
2 primarily involve the study of how people read and comprehend;
3 is that at least a primary part of it?

4 A. Yes.

5 Q. Is one of the primary fields that you study is to
6 help -- strike that.

7 Is one of the primary reasons for your work to help
8 people read better, is that one of the reasons?

9 A. That may be a long-term goal. The more immediate goal is
10 to try and understand what the mental processes are when people
11 read to form, for example, a model of the reading process.

12 Q. Now, I think you covered some of this in your report. Let
13 me ask you, the speed at which someone can read a document
14 depends on various things, right?

15 A. Correct.

16 Q. One of the things that might impact the speed would be the
17 type of document itself, correct?

18 A. Yes. Reading rates will vary at the functions of the
19 material one is reading.

20 Q. That may have to do with how complicated the material is?

21 A. Yes.

22 Q. How dense the words are on the page, how many words per
23 page?

24 A. Yes.

25 Q. Another factor that might impact the speed at which someone

DB78CHE4

Rayner - cross

1 might read a document would have to do with the person
2 themselves, right?

3 A. There is variability among people in terms of how fast they
4 read.

5 Q. Did you have any information about Judge Zambrano, any
6 specifics about him in his reading abilities in this case?

7 A. I think I can assume that Judge Zambrano probably reads
8 between 200 and 400 words per minute since about 98 percent of
9 the population reads in that range.

10 Q. Thank you for that answer. That wasn't my question.

11 A. I have not met Judge Zambrano.

12 Q. Isn't it true another factor that will affect the speed at
13 which someone reads a page would be how much information the
14 person is trying to extract from that page, correct?

15 A. You're getting into a distinction now between reading and
16 skimming. So if you're skimming, you can go a lot faster than
17 if you're reading, but skimming comprehension goes to pieces.

18 Q. Can you define skimming, as you're using the term?

19 A. Skimming means going at rates over 400 words per minute.
20 You're not really processing all of the words, you're trying to
21 get the gist, but you're not getting any of the details.

22 Q. Is there a word for the process, for example, if I had a
23 page and on the page I was looking for a specific thing, for
24 example, a phrase, and I am not trying to read the page for
25 content, either reading or skimming, I am just looking for

DB78CHE4

Rayner - cross

1 specific phrases, is there a word for that?

2 A. It's sort of an example of a digital search.

3 Q. Did you make any assumptions in this case of how long it
4 would take a person to search documents looking for particular
5 things?

6 A. Again, the task that I was assigned was how long would it
7 take to read this material.

8 Q. So the answer to the question is you did not consider that
9 variable, is that right?

10 A. That's right.

11 Q. For the purpose of doing your analysis, did you account at
12 all for the possibility that Judge Zambrano might have spent a
13 longer period of time with certain documents?

14 A. With certain documents?

15 Q. Right.

16 A. Can you explain what you mean?

17 Q. That was a bad question. For example, if the person was to
18 read the document and then also take notes from the document,
19 did you account in your analysis for Dr. Zambrano spending
20 additional time for something like that, taking notes on a
21 document or rereading a document for content?

22 A. No, I didn't, but obviously that's going to add to the
23 amount of time it's going to take to get through a document.

24 (Continued on next page)

DB7LCHE5

Rayner - cross

1 Q. Did you in your analysis account for the possibility that
2 Dr. Zambrano would find some documents he didn't need to read
3 at all once he looked at the document and said I don't need to
4 read that at all, did you account for that?

5 A. Not directly, no.

6 Q. There's an indication in your report that you excluded for
7 the purpose of your calculation about 5 percent of the pages;
8 is that right?

9 A. That's correct.

10 Q. And what was the reason for that?

11 A. Because they contained photographs or graphs, tables.

12 Q. And how did you arrive at 5 percent?

13 A. By sampling the text.

14 Q. What was page 7 on the version I had, paragraph 11E. I
15 think this is a different version. Let me see if I can find
16 it. Can you look at your report and help me. Here it is, here
17 it is. It is page 7. It is paragraph 11E.

18 There's an indication, first of all, let me let you
19 get there. Can you tell me when you're there?

20 A. I just want to make sure I'm in 11E, you said, yes?

21 Q. I think it's at the bottom of paragraph 11E.

22 A. Yeah.

23 Q. Talks about, for example, on page 39, do you see that
24 sentence, the last sentence in the paragraph?

25 A. Yeah.

DB7LCHE5

Rayner - cross

1 Q. And it indicates more than 100 expert reports submitted,
2 and then it uses the word or it says the phrase, have been
3 considered by the judge in handing down this ruling.

4 Did you have any information as to what was meant by
5 considered?

6 A. No. I do not know for sure.

7 Q. Did you make any assumptions about what the word considered
8 meant in that context?

9 A. No.

10 Q. Did you make -- did you do anything to try to compare
11 considered with the definition of reading that you've given us
12 to use in this case?

13 A. Again, I repeat, the task that was assigned to me was to
14 figure out how long it would take to read this document.

15 Q. Did you in doing your analysis make any attempt to
16 determine what portion of the record, the Ecuadorian record,
17 contained documents that were copies of other documents?

18 A. I must say I'm not sure about that. In skimming through
19 the text, I didn't see a lot of duplications, but I can't say
20 that I know for sure.

21 Q. And how much of the text did you skim through -- I mean --
22 I'm sorry.

23 What percentage of the Ecuadorian record do you
24 believe you skimmed through?

25 A. I think I've looked at about a fourth of the total pages.

1 DB7LCHE5

Rayner - cross

2 Q. And was it any particular year, year set, or was it random,
3 your selection?

4 A. It was pretty random, totally random actually.

5 MR. BOOTH: May I have one second.

6 No more questions.

7 THE COURT: We'll take our break here.

(Recess)

8 THE COURT: All right, Mr. Gomez.

9 MR. GOMEZ: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MR. GOMEZ:

12 Q. Good afternoon, Dr. Rayner.

13 Just to clarify part of the record. In your earlier
14 testimony in response to questions by Mr. Booth where Mr. Booth
15 asked you about searching a document for certain phrases, did
16 you use the term visual search or digital search?

17 A. Visual search.

18 Q. Thank you. Sir, were you provided for purposes of your
19 analysis any information as to what amount of the record
20 constituted evidence and what amount constituted legal argument
21 under Ecuadorian law?

22 A. I was provided the entire record but not provided that
23 information specifically.

24 Q. Were you provided any information as to what portion of the
25 record was relevant to the issues that Judge Zambrano had to

DB7LCHE5

Rayner - cross

1 decide in the judgment?

2 A. No. I assumed the entire record was relevant.

3 MR. GOMEZ: Nothing further, your Honor.

4 MR. MASTRO: Nothing further, your Honor.

5 THE COURT: You're excused, Mr. Rayner or Dr. Rayner.

6 Thank you.

7 (Witness excused)

8 MR. MASTRO: Thank you, Professor.

9 THE COURT: Next witness.

10 MR. MASTRO: Your Honor, Chevron calls Rhonda Zygocki.

11 And Ms. Zygocki will be put on the stand by my colleague Chris
12 Joralemon.

13 THE COURT: You spell it like Brooklyn?

14 MR. JORALEMON: Correct, your Honor.

15 RHONDA ZYGOCKI,

16 called as a witness by the Plaintiff,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. JORALEMON:

20 THE COURT: Go ahead, Mr. Joralemon.

21 MR. JORALEMON: Thank you. May I approach, your
22 Honor?

23 THE COURT: You may.

24 Q. Good afternoon, Ms. Zygocki. I've handed you what's been
25 marked Plaintiff's Exhibit 5800.

DB7LCHE5

Zygocki - direct

1 Do you recognize this document?

2 A. I do.

3 Q. What is it?

4 A. It is my testimony submitted to this court.

5 Q. Okay. If you turn to page 10 of Exhibit 5800, the last
6 page of the document, is that your signature?

7 A. It is.

8 Q. And, Ms. Zygocki, when you executed this document on
9 October 30, 2013, as indicated on page 10, were all the
10 statements in there true and accurate to the best of your
11 knowledge?

12 A. They are.

13 Q. And as you sit here today, are all the statements contained
14 in Exhibit 5800 true and accurate to the best of your
15 knowledge?

16 A. Yes, they are.

17 MR. JORALEMON: Your Honor, Chevron offers Plaintiff's
18 Exhibit 5800.

19 MS. FRIEDMAN: Your Honor, we have some issues about
20 this.

21 THE COURT: I know. Why haven't they been solved?
22 I'm not blaming you.

23 MS. FRIEDMAN: I can tell the Court we did have some
24 meetings about this and both sides have different views on
25 things. That's what we have judges for, I guess.

DB7LCHE5

Zygocki - direct

1 THE COURT: But we don't have judges to decide
2 disputes about what number you call to get information to find
3 somebody else's phone number. That's about what we're down to
4 here.

5 MS. FRIEDMAN: Well, if I could phrase the issue for
6 the Court as I see it, what would be helpful to us is to have
7 some guidance on, as I see it, paragraph 6 through 18 are
8 essentially just repeating press releases or paraphrasing press
9 releases and --

10 THE COURT: Without holding me precisely to the
11 paragraph numbers, I have a general sense that you're right
12 about that. And it's an argument. It's somebody's trial
13 brief.

14 MS. FRIEDMAN: And, again, I don't want to create more
15 trouble. But my point, your Honor, is if the Court could make
16 a decision about whether it wants to police the media war that
17 took place between these people, that's what I see shaping up
18 here is, you know, press releases on both sides and each side
19 arguing about what they mean. You have in the record the press
20 releases themselves.

21 So that's our position, your Honor. But if it comes
22 in and I cross-examine her on this, I will. But I just think
23 it doesn't add anything.

24 THE COURT: Mr. Joralemon.

25 MR. JORALEMON: With all due respect to Mr. Friedman,

DB7LCHE5

Zygocki - direct

1 this is not simply a PR war. Your Honor said on the first day
2 of trial Chevron did not, is not bringing this action because
3 there is a public relations strategy on the other side.

4 Ms. Zygocki is a senior executive at Chevron, had
5 oversight responsibilities for public relations and government
6 affairs during the relevant period.

7 The paragraphs cited by Mr. Friedman are specific
8 press releases quoted, not paraphrased, quoted that were issued
9 by Mr. Donziger and those working with him and they
10 specifically relate to Mr. Cabrera's independence and
11 escalating damages figures that originated with Mr. Russell and
12 later with Mr. Cabrera.

13 We are not putting Ms. Zygocki's statement in to
14 establish the falsity of those statements. There's plenty of
15 other evidence for that. Ms. Zygocki is simply testifying
16 these statements were made. She was aware of them. Chevron
17 was aware of them contemporaneously. She's testifying about
18 the impact those statements had on Chevron.

19 THE COURT: The press releases are all in the record,
20 true or false?

21 MR. JORALEMON: All of the press releases are, yes.
22 Mr. Donziger's testimony before Congress where he cites
23 Mr. Cabrera is not in the record, as I understand it.

24 THE COURT: Why not?

25 MR. JORALEMON: We will move it into the record as

DB7LCHE5

Zygocki - direct

1 part of Ms. Zygocki's testimony.

2 THE COURT: Do you have any objection to the testimony
3 coming in?

4 MS. FRIEDMAN: No, your Honor.

5 THE COURT: All right. So, look, Mr. Joralemon, what
6 you're seeing in my hesitation is the stupendous level of
7 frustration with both sides about stuff like this.

8 MS. FRIEDMAN: Can I ask, can I suggest something,
9 your Honor?

10 THE COURT: Yeah.

11 MS. FRIEDMAN: If you look at the last I think
12 paragraphs 22 and 23, if you would give us some guidance. If
13 you think those paragraphs are helpful to anything you have to
14 decide, we can put them in issue and I can cross-examine her
15 about those. And if they're not, I don't think there's
16 anything to talk about here.

17 THE COURT: Who wants to address paragraphs 22 and 23
18 from the plaintiff's side?

19 MR. JORALEMON: I'd be happy to speak to those
20 paragraphs. You mean other witnesses?

21 THE COURT: No, no, no. Lawyer.

22 MR. JORALEMON: That would be me. And, your Honor, as
23 I just said, Ms. Zygocki's testimony is being offered to
24 discuss the impact that defendant's public pressure campaign
25 had on Chevron.

DB7LCHE5

Zygocki - direct

1 Now, to be clear once more, when I say public pressure
2 campaign, I'm not talking about a public relations strategy.
3 There are very specific allegations about falsehoods that
4 defendants here have spread. And Ms. Zygocki is not being
5 offered to prove the falsity or truth of those statements but,
6 rather, the statements were made about Mr. Cabrera's
7 independence, about the damages figure that Mr. Cabrera offered
8 and then Mr. Russell offered that they used.

9 THE COURT: Mr. Joralemon, I appreciate the
10 earnestness and the commitment to the client, I do, for the
11 lawyers on both sides in this case.

12 A sentence such as, Chevron's core values place the
13 highest strategic importance on protecting its people, what
14 does that actually mean that this witness can testify to of her
15 personal knowledge? Does this mean she's here as an expert
16 witness about what each and every person at Chevron believes
17 are the core values? What core values mean? What level of
18 importance each one attached to whatever that person thought
19 were core values?

20 MR. JORALEMON: Sure. I understand your question,
21 your Honor.

22 Ms. Zygocki has been with the company for over 33
23 years. She is a senior executive. She is offering testimony
24 under 701 to this point. It certainly is a rational view that
25 she has based on her experience, and it helps put the context

DB7LCHE5

Zygocki - direct

1 of her testimony.

2 THE COURT: Look, no disrespect to Ms. Zygocki.
3 Enough already with this stuff on both sides. All right. You
4 want to offer the testimony to Congress, offer it.

5 MR. JORALEMON: Okay.

6 THE COURT: What is it?

7 MR. JORALEMON: There are a couple other things that I
8 believe are not quite in the record, your Honor.

9 THE COURT: So let's deal with that.

10 MR. JORALEMON: Okay. So the congressional testimony
11 is at paragraph 12. The other --

12 THE COURT: So that's Exhibit 1130. Now, isn't that
13 actually in the record?

14 MS. FRIEDMAN: I think it is, your Honor.

15 THE COURT: Yes?

16 MR. JORALEMON: All of the exhibits?

17 MS. FRIEDMAN: Yes.

18 THE COURT: So all the exhibits are in the record. So
19 let's go through and see what actually this witness, who I
20 assume is quite a distinguished and experienced executive, no
21 disrespect intended to her or anybody else, has to contribute
22 to the resolution of any facts in issue.

23 MR. JORALEMON: If I can clarify one point, your
24 Honor. Sorry I wasn't clear. When I speak about the impact
25 within Chevron that the public pressure campaign, I'm speaking

DB7LCHE5

Zygocki - direct

1 directly to the issue of irreparable harm. As you know,
2 Chevron is seeking injunctive relief here. So this goes beyond
3 the issue of the monetary impact. Ms. Zygocki as a senior
4 executive can speak to the irreparable harm of the public
5 pressure campaign.

6 THE COURT: All right. I hate to do this. This is a
7 waste of time and both sides are guilty of this, but I'm really
8 at my wit's end with it.

9 Let's look at paragraph 4, the last two sentences.
10 There's no dispute that Mr. Donziger and others have made these
11 various statements, right? They're all in the record.

12 MS. FRIEDMAN: Absolutely.

13 THE COURT: Right, Mr. Joralemon?

14 MR. JORALEMON: Agreed.

15 THE COURT: So we don't need that.

16 That she received internal communications circulating
17 copies of them. Don't need that either, right?

18 MR. JORALEMON: That was offered for the foundation of
19 this witness.

20 THE COURT: It was just offered because you'd like it
21 in the trial brief and you'd prefer to have something in a
22 witness statement. It's obvious. It's blindingly obvious.

23 Paragraph 5. She's observed patterns. What is she, a
24 pattern recognition expert?

25 Please understand this is not personal, Ms. Zygocki.

DB7LCHE5

Zygocki - direct

1 MR. JORALEMON: No, but, again.

2 THE COURT: You haven't sat through what I've sat
3 through.

4 MR. JORALEMON: Your Honor, that's a perfect example
5 of 701 testimony. Ms. Zygocki in her role and her experience
6 has a rational basis for observing a pattern of their public
7 pressure campaign and it goes again to irreparable harm.

8 THE COURT: I'll decide if there was a pattern. You
9 put the statements in. There is or there isn't.

10 MR. JORALEMON: Correct.

11 THE COURT: All right. I don't need that.

12 Paragraph 6. You want her to testify that he issued
13 press releases.

14 That's undisputed, right, Mr. Friedman?

15 MS. FRIEDMAN: Yes.

16 THE COURT: Okay.

17 Paragraph 7, talking about an Amazon defense
18 coalition. Ms. Hinton and Amazon Watch issuing a press
19 release. No dispute about that, right?

20 MS. FRIEDMAN: Correct.

21 THE COURT: Paragraph 8. What in there is disputed,
22 sir?

23 MS. FRIEDMAN: Nothing.

24 THE COURT: Mr. Joralemon?

25 MR. JORALEMON: Your Honor, I will try to expedite

DB7LCHE5

Zygocki - direct

1 this. If they're willing to stipulate to paragraphs 1 through
2 18 that they're not in dispute, then we certainly don't need to
3 have Ms. Zygocki testify about those things.

4 MS. FRIEDMAN: It's a little different. As we go on,
5 your Honor, there are some characterizations of things that
6 we're not willing to stipulate to.

7 THE COURT: Look, the documents are all in. They're
8 all stipulated as authentic. They are what they purport to be,
9 right?

10 MS. FRIEDMAN: Correct.

11 THE COURT: Mr. Gomez?

12 MR. GOMEZ: Correct.

13 THE COURT: Right. Are you willing to trust me to
14 just disregard the advocacy and the stuff that I would describe
15 privately in different terms?

16 MR. JORALEMON: We certainly trust you, your Honor,
17 yes.

18 THE COURT: Mr. Friedman?

19 MS. FRIEDMAN: Well, I don't know what that means.
20 What we're asking is that you either strike this or tell us
21 which part you think is relevant and then I'll address that in
22 cross. I think it ought all be stricken and you've got the
23 documents.

24 THE COURT: Look, you are wasting my time, both of
25 you. It's gratuitous and it's nonsense. I brought this up

DB7LCHE5

Zygocki - direct

1 with respect to Hinton. You said it was justified by Zygocki.
2 I said get together and resolve it. It is so obvious as to how
3 it should be resolved that a first year law student could get
4 this resolved and I want it resolved without my sitting here
5 having to edit it.

6 And do you read me, both of you?

7 MR. JORALEMON: Absolutely.

8 MS. FRIEDMAN: I do too, your Honor.

9 THE COURT: All right. Do it.

10 Now, Mr. Joralemon, if there is anything in here that
11 you think you need as to which this is a competent witness, I
12 want to hear what it is now.

13 MR. JORALEMON: Certainly. It begins at paragraph 19.
14 It's the section entitled Effects of Defendant's Public
15 Pressure Campaign. Nineteen through 23, your Honor.

16 THE COURT: All right. I'll take those paragraphs for
17 what they're worth, as well as paragraphs 1 through 3. Let's
18 go ahead.

19 MR. JORALEMON: Thank you, your Honor. Pass the
20 witness.

21 THE COURT: Understand, Mr. Joralemon, I understand
22 you were carrying out orders.

23 MR. JORALEMON: Thank you, your Honor.

24 THE COURT: I don't hold this as a personal -- what's
25 the right word -- failure on your part.

DB7LCHE5

Zygocki - direct

1 MR. JORALEMON: Thank you. I appreciate that.

2 THE COURT: Okay. Now let's go and let's keep it
3 short.

4 MS. FRIEDMAN: Yes, your Honor. So, your Honor,
5 what's in play, as I understand it, is 1 through 3 and 19 to
6 23. Is that correct?

7 THE COURT: Correct.

8 You earned a drink tonight, Mr. Joralemon.

9 MR. MASTRO: I'm buying and apologizing.

10 THE COURT: You better. You better buy one for
11 Mr. Friedman too because, you know, after yesterday or the day
12 before you owe him one.

13 MR. MASTRO: I will buy him one too, your Honor, in
14 the spirit of harmony here.

15 CROSS-EXAMINATION

16 BY MS. FRIEDMAN:

17 Q. Ms. Zygocki, my name is Rick Friedman. I represent
18 Mr. Donziger.

19 Do you have your witness statement up there with you?

20 A. I do.

21 Q. Would you mind turning to paragraph 20, please. On page 9,
22 you say, I personally have expended and continue to expend
23 incalculable hours and resources.

24 Do you see that sentence?

25 A. Yes.

DB7LCHE5

Zygocki - cross

1 Q. Working to mitigate the unjustified threats and harm posed
2 by the misinformation campaign.

3 Can you tell us what you mean when you are referring
4 to unjustified threats and harm?

5 A. I believe it refers directly to the unjustified threats to
6 the company's reputation and financial stature that a
7 \$19 billion judgment would create for the company.

8 Q. Did you, before the judgment came out, did you view the
9 lawsuit itself down in Ecuador as an unjustified threat?

10 A. Yes, we did.

11 Q. And unjustified harm?

12 A. Yes, we did.

13 Q. All right. And you're not in your testimony making any
14 distinction in terms of the harm caused by the lawsuit itself
15 versus the judgment versus the Cabrera false statements that
16 you've alleged, you're not making those kinds of distinctions
17 in your testimony or are you?

18 MR. MASTRO: Objection to the form, your Honor.

19 THE COURT: Overruled.

20 A. I see them as all connected in that regard.

21 Q. All right. And when you talk about misinformation, without
22 going through all the underlying material, just so we
23 understand your position, you're not saying -- well, let me ask
24 it this way: Are you saying there was no pollution in the
25 Oriente region?

DB7LCHE5

Zygocki - cross

1 MR. MASTRO: Objection, your Honor, scope.

2 THE COURT: Sustained. We are not doing that,
3 Mr. Friedman. We are not trying the Ecuadorian pollution case
4 through the head of public affairs at Chevron.

5 MS. FRIEDMAN: I am just trying to get at what
6 misinformation she's referring to, your Honor. Maybe I'll ask
7 it a different way.

8 THE COURT: Look, Mr. Friedman, it's Chevron's
9 position that this, subject to various limitations that were
10 articulated in pretrial, your client has done 'em wrong, sir,
11 and vice versa. Now, I understand that that's what she's
12 talking about.

13 MS. FRIEDMAN: All right.

14 Q. Ms. Zygocki, are you a stockholder in Chevron?

15 A. Yes, I am.

16 Q. And can you tell us when the pressure campaign started?

17 A. I would say the campaign, there has always been an element
18 of the pressure campaign from the time the \$6 billion number
19 was first put out by the plaintiffs.

20 But it escalated quite a bit first in the 2008 time
21 frame when the Cabrera report came out and the number was 16,
22 coupled with some very high profile kind of public recognition
23 of, for instance, Pablo Fajardo and Luis Yanza in terms of CNN
24 Heroes and Goldman awards for environmental excellence.

25 But in 2009, the campaign reached a very high heights

DB7LCHE5

Zygocki - cross

1 when the second version, I guess, or the \$27 billion Cabrera
2 report was out there, coupled with the movie Crude and the 60
3 Minutes segment, that it was the combination of the damages
4 claim and, you know, what we believed to be very misinformation
5 and false information in that regard with a very high profile
6 public media campaign that really exaggerated or I would call
7 described these harms in very strong terms.

8 On top of that media campaign, we were experiencing
9 between 2008 and 2010 on average a press release a week issued
10 through Chevron Toxic. So every week there was a different
11 message coming out, many of them grounded in the Cabrera
12 report. We didn't know which way they were coming from. And
13 around this damages assessment there was descriptions accusing
14 us of everything from lying to shareholders, misleading
15 Congress, cultural genocide, and human rights abuses.

16 So it was the combination of those things that the
17 pressure came up and, as a result, more and more of our
18 stakeholders, whether they be employees, government partners,
19 community partners, and policymakers began to ask questions on
20 that and we were responding to these things in multiple
21 jurisdictions.

22 Q. So is the answer to my question in 2007?

23 A. I think the height of the campaign was in 2009 and the ramp
24 up began I would say 2007.

25 Q. Okay. That was my question, when did it start. So the

DB7LCHE5

Zygocki - cross

1 answer is 2007?

2 A. Yes.

3 Q. And how much has Chevron stock price increased since 2007?

4 MR. JORALEMON: Objection, your Honor, relevance.

5 MS. FRIEDMAN: They're arguing they've been harmed by
6 this campaign, your Honor. She references stockholders and all
7 sorts of other things.

8 MR. JORALEMON: That mischaracterizes her testimony.

9 THE COURT: Look, unless you are proposing, and I
10 think it quite clear because you've indicated what the rest of
11 your evidence is going to be, to bring in a qualified expert to
12 testify that the stock price wouldn't have been higher but for
13 this campaign, assuming for the sake of discussion that that's
14 a relevant measure, this is going nowhere because it has no
15 value. Right?

16 MS. FRIEDMAN: Well, I think it would be plaintiff's
17 burden to show some harm, yes. What I'm trying to show is that
18 they are unable to show any harm through the cross-examination.

19 We stipulate to that, stipulate to the stock price --

20 THE COURT: I propose a deal. They'll stipulate
21 there's no harm if you'll stipulate there's no merit to your
22 defense.

23 MS. FRIEDMAN: I understand.

24 THE COURT: I'm sure we could work that out.

25 MR. JORALEMON: Your Honor, just for the record, we've

1 DB7LCHE5

Zygocki - cross

1 already worked out a stipulation about certain harms,
2 attorneys' fees, and Chevron is not seeking stock price
3 differential as damages.

4 THE COURT: Yes, we understand that.

5 MS. FRIEDMAN: I'll sit down, your Honor.

6 THE COURT: Mr. Gomez. Thank you.

7 CROSS-EXAMINATION

8 BY MR. GOMEZ:

9 Q. Good afternoon, Ms. Zygocki.

10 Ms. Zygocki, would you please direct your attention to
11 paragraph 20 of your statement, page 9, the sentence that
12 begins, as a senior executive with Chevron.

13 Do you see that sentence, ma'am?

14 A. Yes, I do.

15 Q. Ma'am, in that sentence you refer to hours and resources
16 working to mitigate the unjustified threats.

17 Do you see that phrase?

18 A. Yes, I do.

19 Q. Can you tell me, do you have any quantification of the
20 hours that you reference in that sentence?

21 A. I can estimate that during the time, particularly I would
22 say 2009 and 2010, which I believe and observed as the height
23 of this PR campaign, I personally in my executive role spent
24 more than the majority of my time dealing with issues with
25 respect to the Ecuador case.

DB7LCHE5

Zygocki - cross

1 Q. Have you quantified in any written document as you spent
2 those hours how many hours per day you spent as you described?

3 A. No, I have not.

4 Q. And turning to the reference to resources in that same
5 sentence --

6 A. Yes.

7 Q. -- what quantification have you kept of the resources that
8 you refer to in that particular statement?

9 A. I have not kept a quantification of those resources.

10 Q. Thank you. Moving further down into in that paragraph, the
11 last sentence begins with, these and other activities also have
12 demanded the time, attention, and focus of many other members
13 of the company's executive management.

14 Do you see that phrase, ma'am?

15 A. Yes, I do.

16 Q. Once again, with respect to the time that you refer to in
17 that phrase, what steps have you taken to quantify that time?

18 A. I have not taken any steps to quantify that time.

19 Q. And what steps have you taken to quantify the attention
20 that you refer to in that phrase?

21 A. I have not taken steps to quantify the attention.

22 Q. And have you taken any steps to quantify the focus that you
23 referred to in that phrase?

24 A. No, sir, I haven't.

25 Q. Moving to the next paragraph, there is the final sentence

1 DB7LCHE5

Zygocki - cross

2 reads, some, including our lawyers, working on the litigation
3 in Ecuador. Do you see that phrase, ma'am?

4 A. Yes.

5 Q. I want to direct your attention to the portion of the
6 phrase which reads, even have feared for their physical safety
7 or have been subjected to criminal charges brought against them
8 by the Ecuadorian government at the instigation of Mr. Donziger
and others working with him.

9 Do you see that, ma'am?

10 A. I do.

11 Q. Ma'am, do you -- is your basis for that statement
12 information that has been reported to you only or have you
13 actually observed that?

14 A. It has been information reported to me.

15 (Continued on next page)

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DB78CHE6

Zygocki - cross

1 Q. Moving to the next paragraph 22, you refer in the second
2 sentence to the phrase "personal attacks like those leveled by
3 Mr. Donziger and others working with him." Do you see that
4 phrase?

5 A. Yes, I do.

6 Q. Again, is this information that has been reported to you,
7 ma'am?

8 A. These are threats that I have observed.

9 Q. Is it your testimony that Mr. Donziger has threatened you
10 personally, ma'am?

11 A. Mr. Donziger has not threatened me personally.

12 Q. So what have you observed?

13 A. I have observed personal attacks on my CEO. I have
14 observed personal attacks on a board member.

15 Q. Is that all?

16 A. I have observed personal attacks on members of our
17 government relations team, some of our government advisors,
18 political consultants.

19 Q. These personal attacks that you have observed, have they
20 all been in press releases?

21 A. They have been in press releases. They have been through
22 attendance of some of these groups at our annual meetings.

23 Q. In an annual meeting, have you seen someone attack the CEO
24 of your company, ma'am, is that your testimony?

25 A. I have seen them attack our CEO with words.

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Zygocki - cross

1 Q. So you have seen someone say something to your CEO that you
2 didn't like, is that correct?

3 MR. JORALEMON: Objection. Form.

4 THE COURT: I think this witness is sufficiently
5 experienced to give an appropriate response. Overruled.

6 A. Yes, I have.

7 Q. Would the same qualify for the personal attack against the
8 board member that you observed someone say something to the
9 board member that you didn't like?

10 A. I received a letter from one of these groups that was sent
11 to a board member that referenced a threat.

12 THE COURT: A threat of physical harm or some other
13 kind of threat?

14 THE WITNESS: A threat of protest at their residence.

15 MR. GOMEZ: I have nothing further.

16 THE COURT: Thank you.

17 Mr. Joralemon.

18 JUROR: Nothing further.

19 THE COURT: Ms. Zygocki, thank you very much. Sorry
20 you had to go through this, as I am sorry that any witness
21 called in in these circumstances for these kinds of unnecessary
22 purposes has to go through it.

23 (Witness excused)

24 THE COURT: And that includes in large measure
25 Ms. Hinton.

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Zygocki - cross

1 Let's go. Anything else?

2 MR. MASTRO: Yes, your Honor. Chevron calls Weston
3 Anson.

4 WESTON ANSON,

5 called as a witness by the plaintiff,

6 having been duly sworn, testified as follows:

7 THE DEPUTY CLERK: State your name and spell your last
8 name for the record.

9 THE COURT: Before we commence the direct, just to be
10 absolutely clear about what I just said to Ms. Zygocki. There
11 was almost nothing in her statement that was necessary, in
12 significant measure. Whatever I allowed to come in was
13 argument. In light of all of the discussion about larding up
14 the witness statements with characterizations, matters of which
15 witnesses lacked personal knowledge and argumentation, I am
16 sorry that Chevron's counsel called her. The cross-examination
17 was tendentious, but it was provoked, and it was a waste.
18 That's fundamentally my point.

19 MR. FRIEDMAN: Can I address this witness for a
20 second. He is an unjust enrichment expert, which I think has
21 been taken out of the case.

22 THE COURT: I have not seen a statement so I don't
23 know what it is.

24 MR. MASTRO: Just to be clear, this witness is here as
25 a damages expert to speak to potential and actual harms and

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Anson - direct

1 future harms from both enforcement, and the potential that
2 enforcement activities are successful, to the extent they have
3 already gotten traction, how that adversely affects or harms
4 Chevron. We tried to stipulate to his testimony too, just like
5 we did with Mr. Ryan. We didn't want to have to call him.

6 THE COURT: So the whole point is that, if and to the
7 extent judgment is enforced, there is irreparable harm?

8 MR. MASTRO: That's part of it. Also, the issues
9 would be the trademarks and the royalties associated with it is
10 causing and will cause harm to Chevron going forward from the
11 enforcement activity in Ecuador right now. And that was the
12 point of his testimony, to establish there is irreparable harm
13 that will occur to Chevron.

14 THE COURT: Mr. Friedman, isn't that obvious?

15 MR. FRIEDMAN: He was designated as an unjust
16 enrichment expert. The direct testimony we were given
17 addresses only the IP, the trademark stuff in Ecuador.

18 THE COURT: Nobody has bothered to give me this direct
19 testimony so I don't really know what we are talking about.

20 MR. MASTRO: It addresses that before your Honor had
21 ruled on unjust enrichment, because that's an issue in which
22 they have gotten some traction, but he speaks generally to
23 enforcement activities. And we sent a bare-bones stip that
24 would have addressed this and Mr. Friedman rejected it. We
25 tried to avoid having to call this witness at all, and we think

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Anson - direct

1 it is something that should be stipulated to. We are not
2 attempting, your Honor, to reargue unjust enrichment through
3 this witness.

4 THE COURT: What it is is you haven't revised the
5 statement in light of the fact that that is out of the case, or
6 never was in it.

7 MR. MASTRO: What we did do was we sent a proposed
8 stipulation to try and get this witness's testimony.

9 THE COURT: What is the problem, Mr. Friedman?

10 MR. FRIEDMAN: Your Honor, I have five minutes or less
11 of questions. If this is in the case, it's in the case. I
12 will ask my five minutes of questions.

13 THE COURT: I don't know what the "this" is.

14 MR. FRIEDMAN: I don't see the relevance, but if it's
15 relevant, I have got questions.

16 THE COURT: Just to take an example, the company owns
17 trademarks, right?

18 MR. FRIEDMAN: It doesn't own these trademarks.

19 THE COURT: A subsidiary owns the trademarks?

20 MR. FRIEDMAN: A subsidiary owns the trademarks.

21 THE COURT: The trademarks are what?

22 MR. FRIEDMAN: Things relating to oil. I don't think
23 it really matters what they are.

24 MS. MALONEY: They are trademarks relating to
25 industrial lubricants in Ecuador only.

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Anson - direct

1 MR. FRIEDMAN: I think it would be faster to just
2 submit his statement. I will ask a few questions and we will
3 be done.

4 THE COURT: Is that right, Mr. Gomez?

5 MR. GOMEZ: Yes.

6 THE COURT: Let's go.

7 DIRECT EXAMINATION

8 BY MS. MALONEY:

9 Q. Good afternoon, Mr. Anson.

10 A. Good afternoon.

11 Q. Mr. Anson, did you submit a declaration in connection with
12 this case in this trial?

13 A. Yes, I did.

14 MS. MALONEY: May I approach, your Honor?

15 THE COURT: Yes.

16 Q. Mr. Anson, I am showing you what is marked as Plaintiff's
17 Exhibit 6000 for identification. Would you take a moment to
18 look at it, please?

19 MS. MALONEY: For the record, your Honor, 6000 for
20 identification is 20 pages under a heading direct testimony of
21 Weston Anson.

22 Q. Do you recognize the document, Mr. Anson?

23 A. I do. It has my initials on each page and my signature at
24 the end.

25 Q. So this is your declaration for this case, is that correct?

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Anson - direct

1 A. Yes, ma'am.

2 Q. At the time you signed the declaration, were your
3 statements truthful and accurate?

4 A. Yes, of course.

5 Q. Is everything in your declaration truthful and accurate as
6 of today?

7 A. Yes.

8 Q. Do you offer your declaration as your full and complete
9 direct testimony?

10 A. Yes.

11 MS. MALONEY: Plaintiffs offer Exhibit 6000.

12 THE COURT: Received on the same basis as the others.

13 (Plaintiff's Exhibit 6000 received in evidence)

14 MS. MALONEY: No further questions.

15 CROSS-EXAMINATION

16 BY MR. FRIEDMAN:

17 Q. Mr. Anson, my name is Rick Friedman. I just have a few
18 questions for you.

19 Is it correct to say that all of the property that you
20 refer to in your report could be characterized as intellectual
21 property?

22 A. Yes.

23 Q. Is it also fair to say that all of the intellectual
24 property referenced in your witness statement is owned by
25 Chevron Intellectual Property LLC?

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Anson - cross

1 A. As I understand it, it was owned until recently when it was
2 embargoed.

3 Q. Before it was embargoed, all the property referenced in
4 your report was owned by Chevron Intellectual Property LLC?

5 A. That's my understanding, yes.

6 Q. And Chevron Intellectual Property LLC is an indirect
7 subsidiary of Chevron Corporation?

8 A. Yes.

9 Q. What do you mean by indirect subsidiary in your witness
10 statement?

11 A. Because I am not a lawyer, I cannot describe to you the
12 legal construct, but it is a subsidiary held through another
13 subsidiary is my understanding.

14 Q. So what you at least meant in your report was there is at
15 least one layer of subsidiaries between Chevron Intellectual
16 Property and Chevron Corporation?

17 A. That was my understanding.

18 Q. None of the property you address in your report is or was
19 owned by Chevron Corporation, is that correct?

20 A. My understanding is it's all owned by Chevron through
21 another subsidiary.

22 Q. So is it your understanding then that arm to Chevron
23 Intellectual Property LLC equals arm to Chevron Corporation?

24 A. Yes. In the sense that, first, if Ford Motor Company held
25 its trademarks, as it sometimes does, through a subsidiary or

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Anson - cross

1 an indirect subsidiary in Delaware, for example, and those
2 trademarks were taken from it, Ford Motor Company, e.g. as an
3 example, would be harmed.

4 Similarly, there is injury here because these assets
5 are real assets. If you think of them like a building, it's as
6 if a building has been taken from Chevron LLC, and that
7 building can no longer be used. Chevron LLC, they can't rent
8 the building anymore; they can't sell the building anymore;
9 they can't modify the building anymore; they can't expand the
10 building anymore; they can't do anything with, quote, the
11 building anymore.

12 In a similar sense, these assets have been taken, and
13 they have suffered real damage, sir.

14 Q. When you say "they," you're talking about Chevron
15 Corporation?

16 A. Yes. Ultimately that's correct.

17 Q. Even though they were taken from a separate legal entity?

18 A. Well, again, I am not an attorney, sir.

19 MS. MALONEY: Objection, your Honor. This is beyond
20 the scope of his report and it calls for a legal conclusion.

21 THE COURT: I think Mr. Friedman just gave up on it.

22 MR. FRIEDMAN: I just ended it.

23 THE COURT: Thank you.

24 Mr. Gomez.

25 MR. GOMEZ: One moment to confer, please.

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Alvarez - direct

1 Nothing further.

2 THE COURT: Thank you. Mr. Anson, you are excused.

3 (Witness excused)

4 MR. MASTRO: We have one last witness if we have time
5 today. Our next witness is Dr. Alvarez Grau.

6 VLADIMIRO ALVAREZ GRAU,

7 called as a witness by the plaintiff,

8 having been duly sworn through a Spanish

9 interpreter, testified as follows:

10 MS. LITTLEPAGE: I have some issues with this
11 witness's testimony. Do you want to hear them?

12 THE COURT: Let's get on with the testimony. I will
13 hear your issues another time.

14 MS. LITTLEPAGE: It's about his testimony.

15 THE COURT: Tell me what they are.

16 MS. LITTLEPAGE: We have raised these same objections
17 in our written brief about the expert Elena, but Mr. Alvarez
18 Grau's entire statement is propensity evidence. Basically, his
19 point is because President Correa and his government puts
20 pressure on the judicial system, you can assume or infer that
21 President Correa put pressure on this particular case and this
22 particular judge, without any evidence of that.

23 We also have a relevance objection to his testimony
24 because we, obviously, are here on a RICO case and a New York
25 State fraud case which has nothing to do with President Correa

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Alvarez - direct

1 who is not named as a co-conspirator.

2 MR. MASTRO: Your Honor, we are a little late in the
3 day for a witness who has actually put in a witness statement
4 two and a half years ago. We offer him not only for the
5 reasons that Sandra Elena was relevant, but there are also
6 broader implications for his testimony about the lack of
7 impartiality and independence and honesty within the Ecuadorian
8 judicial system that I think bear on the issues that they have
9 raised in the case, and defenses they have raised in the case.

10 So for both reasons, all three reasons, you should
11 hear Dr. Alvarez Grau's testimony. It's kind of late in the
12 day to be raising this particular objection.

13 THE COURT: I am certainly going to hear it. I will
14 decide what, if any, relevance or significance it has down the
15 road.

16 MR. MASTRO: May I approach the witness?

17 THE COURT: Yes.

18 MR. MASTRO: I am showing the witness what has been
19 marked as Plaintiff's Exhibit 6200.

20 DIRECT EXAMINATION

21 BY MR. MASTRO:

22 Q. Dr. Alvarez, is this your declaration, your direct
23 testimony in this case, sir?

24 A. Yes, it is.

25 Q. Can you please turn, sir, to page 68 and tell me whether

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Alvarez - direct

1 that's your signature, sir?

2 A. It is my complete signature on page 68, and each page also
3 has been initialized by me.

4 Q. Thank you, Dr. Alvarez.

5 Was this true and correct at the time you executed
6 this declaration on October 29, 2013?

7 A. Yes. All of the matters on which I give my opinion and my
8 conclusions are truthful, yes, but there are some events that
9 have caused a personal impact on me, and they are not included
10 in my statement.

11 Q. These are events that have happened over the past month or
12 so, sir?

13 A. As of the month of September, September and October, yes.

14 MR. MASTRO: Your Honor, we offer the declaration as
15 Dr. Alvarez's direct testimony, but I would like to do a brief
16 supplemental direct on these recent events.

17 MS. LITTLEPAGE: Judge, I know it's late in the day
18 and it's not my fault. I have noticed this part of Mr. Alvarez
19 Grau's witness statement. I have asked Chevron to share with
20 me what these issues are. They did not. So I want to object
21 because I don't know what is coming, and I don't know that I
22 should have to hear for the first time from the stand what is
23 coming.

24 MR. MASTRO: Actually, I did respond to Ms. Littlepage
25 and explained to her that they are public statements, either

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Alvarez - direct

1 published or broadcast, by government officials about
2 Dr. Alvarez personally over the last several weeks.

3 THE COURT: I understand in civil cases there is
4 ordinarily a lot of discovery, but that doesn't mean that
5 nobody can put in any evidence that the other side, for one
6 reason or another, hasn't heard before.

7 MS. LITTLEPAGE: I understand.

8 THE COURT: Welcome to trial courtrooms.

9 MS. LITTLEPAGE: If we are now going to hear that
10 there were public statements about Mr. Alvarez Grau personally,
11 I would have liked to have had them so I could have looked at
12 them, seen the context of them, and maybe done some
13 investigation as to how those came about or what was the
14 context of them. Instead, I am going to hear it for the first
15 time and then this witness is going to leave, and I will have
16 no opportunity to cross-examine him on whatever he is going to
17 say. I don't know if it's true. It's obviously going to be
18 hearsay even if it's coming out of newspapers or radio or TV.
19 I can't cross-examine on that.

20 THE COURT: What precisely is the application and what
21 is the legal basis for it?

22 MS. LITTLEPAGE: Objection. Hearsay.

23 THE COURT: To what in particular?

24 MS. LITTLEPAGE: To whatever public statements he is
25 about to discuss that certainly are not part of his expert

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Alvarez - direct

1 report.

2 THE COURT: If you have a hearsay objection, it might
3 be useful to hear what the question is before you lodge it.

4 MR. MASTRO: Thank you, your Honor.

5 We offer Plaintiff's Exhibit 6200.

6 THE COURT: Received on the same basis as the others.

7 (Plaintiff's Exhibit 6200 received in evidence)

8 BY MR. MASTRO:

9 Q. Dr. Alvarez, you said there are certain recent events in
10 Ecuador that you wanted to explain that bear on your testimony.
11 Would you please tell the judge what those are?12 A. Firstly, in the middle of the month of September, I
13 received a phone call from a reporter of a newspaper, a
14 government newspaper, which is El Telegrafo. And in that phone
15 interview, I was told that the reporter had -- that he had a
16 privileged list from Chevron, or belonging to Chevron, about
17 the attorneys, aides, and persons who had given reports in
18 favor of Chevron, and that in that list Vladimiro Alvarez was
19 named with first and last name, which made it known to the
20 entire country that I was giving reports that in some way
21 disparaged the entire country.22 Then after a few questions, I was asked if I didn't
23 care that my report on the lack of respect for the rule of law
24 in Ecuador, and the lack of the independence of the functions
25 of the state, as well as the lack of impartiality and the

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Alvarez - direct

1 function of justice in Ecuador, when faced with political,
2 social and economic pressure, if I didn't care that that would
3 be prejudicial to the lives of 30,000 indigenous persons and
4 many other Ecuadorians. To which I answered that when I give
5 an opinion, or when I reach a conclusion, and do so based on my
6 deepest conviction, that it is not a concern of mine who will
7 be benefited or not by that opinion or conclusion, and that it
8 is based on my deepest conviction.

9 MR. GOMEZ: Objection. Move to strike the witness's
10 response. With the exception of his statement to the
11 journalist, all testimony of what the person calling him told
12 him should be stricken as hearsay.

13 MS. LITTLEPAGE: Objection. Relevance.

14 MR. MASTRO: It's not offered for the truth of what
15 the person said. It's offered for the fact that was the kind
16 of statement that was being made to him by the government run
17 newspaper reporter who contacted him.

18 THE COURT: It's offered for a nonhearsay purpose.
19 It's received for a nonhearsay purpose. That disposes of Mr.
20 Gomez. And as to relevance, I will decide in due course.

21 Q. Dr. Alvarez, did there come a time in October of 2013, when
22 any government official made a public statement in a public
23 broadcast about you personally?

24 MS. LITTLEPAGE: Objection. Hearsay.

25 MR. MASTRO: It's not offered for the truth. It's

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Alvarez - direct

1 offered for the fact that the statement was made about his
2 person.

3 A. Must I answer?

4 THE COURT: Yes.

5 A. In effect, the very president of the country, Rafael
6 Correa, in a press broadcast of radio and other media, in one
7 segment of his address, referred to the dirty hand of Chevron.
8 And he mentioned that the citizens of Ecuador should know that
9 Vladimiro Alvarez is an employee of Chevron, and he is paid by
10 Chevron to issue reports that cause the country to be
11 disparaged.

12 MS. LITTLEPAGE: Objection. Relevance.

13 THE COURT: You have my ruling.

14 Q. Dr. Alvarez, what effect, if any, have these incidents over
15 the past several weeks had on your willingness to testify in
16 this case?

17 MS. LITTLEPAGE: Objection. Relevance.

18 THE COURT: I have said what I have to say on that
19 subject earlier, Ms. Littlepage. Your record is preserved.

20 Q. Please tell us, Dr. Alvarez.

21 A. After the president's statements, other government
22 officials have referred to persons giving reports of various
23 kinds for Chevron, as well as to lawyers defending Chevron, as
24 traitors to the fatherland or traitors to the country.

25 And mysteriously, a Web page has also appeared that

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Alvarez - direct

1 goes by www.losvendepatria.com. And in the list on that Web
2 page, which includes attorneys as well as other press
3 commentators, next to my name and under a photo of me there is
4 a phrase, which I consider to be offensive, which says, he sold
5 his country, he sold out his country.

6 The same Web page has then been repeated on Twitter
7 and Facebook, pointing me out as a traitor to my country, among
8 others. I, who have worked all my life for the peace of my
9 country. I, who have received the highest decoration of the
10 Ecuadorian state, the national merit order and the rank of
11 Grand Cross, for my work on the commission that brokered the
12 peace accords after centuries of war with Peru.

13 These events are offensive to my own personal
14 reputation. They offend my patriotism in the eyes of future
15 generations and those students who I have taught for the 35
16 years that I have been a professor. And they could affect me
17 professionally very seriously if clients of mine, who need to
18 maintain good relationships with the government, decide to no
19 longer use my services at this stage of my life.

20 Q. Are you ready to go forward with your testimony, sir?

21 A. Yes, sir.

22 Q. Thank you, Dr. Alvarez. Thank you for being here.

23 MR. MASTRO: I turn over the witness.

24 THE COURT: My next case is ready.

25 The witness will please return at 9:30 on Tuesday

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1 morning. And I need a word with counsel before that.

2 MR. FRIEDMAN: Did you mean tonight?

3 THE COURT: Right now.

4 Dr. Alvarez, you can step down for the moment. We
5 will see you on Tuesday.

6 Let's address just for a moment a couple of logistical
7 problems or questions.

8 It seems to me that there needs by the end of this
9 trial the one indisputably authentic paper set of all the
10 evidence that's been received in evidence, all the exhibits
11 that have been received in evidence.

12 Now, I don't think there is actually a big problem,
13 but some work has got to be done. The court reporters and my
14 deputy have been keeping track of the exhibits as they come in,
15 but it seems to me, given everything else that allegedly has
16 happened in this case, there should be a set of the exhibits in
17 which at least one lawyer on each side shall have initialed
18 what they agree is the exhibit that's been received.

19 Now, if we had to reconstruct it in my chambers, we
20 could do it, but I would be out of business for a considerable
21 period of time, or at least my staff would.

22 Then there is the matter of the electronic versions
23 which are indispensable given the volume. And I want a set,
24 one set at least, that both sides have initialed, physically
25 initialed. And then I want to make sure you're all up-to-date

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1 with getting me the material. Because some of these witness
2 statements, Anson and Zygocki, and I think this last witness,
3 it is conceivable one or more of them were in my chambers, but
4 I am not sure that they all were.

5 What I am going to propose is that somebody delegated
6 by each side meet with my deputy tomorrow, you can work out
7 exactly when, figure out how you're going to get this done so
8 that by the time we end the testimony it's indisputably done
9 and any disputes that there may be, and I surely hope there are
10 none, there is no reason to be any, are in a position to be
11 resolved then and there. So before you all leave tonight, make
12 an appointment with my deputy for tomorrow and meet with him
13 and work out how we are going to accomplish this.

14 How long a cross are we anticipating for this witness?

15 MS. LITTLEPAGE: I am awful with the translation
16 estimate. I would say 30 minutes if he spoke English. So
17 maybe 45 with the translation.

18 THE COURT: Mr. Gomez.

19 MR. GOMEZ: Probably 15, 25 minutes.

20 THE COURT: So we should be done with him by 10:30 on
21 Tuesday.

22 Then other than Dr. Lipton, is that it?

23 MR. MASTRO: He is our last witness next Thursday,
24 your Honor.

25 The only other proviso on that, your Honor, is it's

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1 not clear to us whether certain of the Ecuadorian witnesses,
2 like Mr. Tarco, are coming here or not. Whether he comes here
3 or not might affect whether we will need to call an additional
4 witness.

5 THE COURT: I understand that.

6 Who are the first four or five defense witnesses?

7 MR. FRIEDMAN: Ms. Hinton will be our first witness.
8 I am just looking for my list.

9 THE COURT: Her witness statement you better clean up.

10 MS. LITTLEPAGE: I am responsible for her. So I would
11 like some guidance from the Court. Because Ms. Hinton is a
12 co-conspirator, and there are specific allegations raised in
13 the complaint about her that she tried to address in her
14 witness statement.

15 THE COURT: Mostly what she tried to do is essentially
16 what Ms. Zygocki tried to do, which is to write a trial brief,
17 without regard to what she had any personal knowledge of.

18 MS. LITTLEPAGE: Ms. Zygocki is not a named
19 co-conspirator.

20 THE COURT: Even named co-conspirators have to give
21 evidence that is admissible and competent.

22 MS. LITTLEPAGE: I believe it makes Ms. Hinton's state
23 of mind relevant, whereas Ms. Zygocki's state of mind is not
24 relevant.

25 THE COURT: That's a fair point.

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1 MR. FRIEDMAN: We are going to meet with her again
2 tomorrow to look at the statement.

3 THE COURT: Clean it up.

4 After Hinton?

5 MS. LITTLEPAGE: Will be Donald Moncayo.

6 Judge, we had a couple of witnesses that we are having
7 visa appointments today. So when I get home tonight, we should
8 know whether they can travel over the weekend, but I can't tell
9 the Court right now because their appointments were while we
10 were in court today.

11 THE COURT: Who are they?

12 MS. LITTLEPAGE: Ms. Calva.

13 THE COURT: She is going to have to give a deposition
14 anyway.

15 MS. LITTLEPAGE: As soon as she can get her visa, we
16 will bring her in.

17 THE COURT: Who is the other one?

18 MS. LITTLEPAGE: We are waiting on Mr. Camacho and
19 Humberto Piaguaje.

20 THE COURT: He has a visa, right?

21 MR. GOMEZ: No. Javier Piaguaje has a visa. Humberto
22 Piaguaje, we spoke yesterday about him. I conferred with
23 co-counsel, and we found that we are not going to be able to
24 cover Mr. Humberto with Javier's. We considered the problem
25 with the deposition. In any event, Humberto will sit for a

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1 deposition if necessary. I still have to check the Rule 26
2 disclosures. My understanding was that Mr. Humberto Piaguaje
3 was disclosed in the Rule 26 disclosures. In any event, he
4 will, if necessary, submit to a deposition.

5 THE COURT: I already ordered it, as I remember it.

6 MR. MASTRO: Yes, your Honor.

7 MR. GOMEZ: I am informed that it's not expected he
8 will be informed of his visa at least until Tuesday or
9 Wednesday.

10 THE COURT: So he is not going to be here on Tuesday.
11 So you have got Hinton and Moncayo. Who is next? You have got
12 on all the rest of them the visa contingency, whether they show
13 up, and in at least two, maybe three of the cases, depositions.
14 So none of those are possibly getting on until Thursday.

15 MS. LITTLEPAGE: We are hoping Ms. Calva will be here
16 over the weekend and she can sit for a deposition on Monday.

17 Mr. Ponce and Mr. Alban both have visas and can
18 travel.

19 THE COURT: So they will be ready to go on Tuesday if
20 you need them.

21 MS. LITTLEPAGE: Yes, sir.

22 Then the only other person we have is Mr. Donziger.

23 THE COURT: There was a letter that crossed my desk
24 today or yesterday from him saying that he would go on the
25 18th. He is going to be ready to go when you have no more

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witnesses to put on, unless you want to call him earlier. I am not going to adjourn for a couple of days to give him another break. He has not been here for two days already consecutively, not that he was obliged to be, and he has got Friday, Saturday, Sunday and Monday off, six days between his last appearance in this courthouse and Tuesday. So plenty of time.

MR. MASTRO: Your Honor, I am glad this came up because Mr. Donziger has not yet provided a written declaration by Wednesday before the week he is going to testify. So we have nothing from Mr. Donziger right now and it appears, and we wrote to counsel last night, it appears he is going to get on next week.

THE COURT: Mr. Friedman, what is the story?

MR. FRIEDMAN: Your Honor, the story is that -- well, part one, I told Mr. Donziger to stay away from court and work on his declaration.

THE COURT: I wasn't faulting him for not being here.

MR. FRIEDMAN: He and I have different views about how long next week it is going to take.

THE COURT: Seven days.

MR. FRIEDMAN: How long our case will take. I will have him prepared to get on the stand. I am very conscious of the need to get a witness statement to the defense before we put him on so they have a time to look. We did not get a

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1 witness statement last night from Mr. Donziger. If we had to,
2 we can throw him on the stand tomorrow, but we don't have a
3 witness statement, and that's the major impediment. I plan to
4 spend most of tomorrow with him, and all I can tell you is my
5 number one priority is to get that done. I don't know what
6 else to say.

7 THE COURT: Well, he has had plenty of advance notice.

8 MR. FRIEDMAN: I know that.

9 THE COURT: Get it done.

10 Anything else tonight?

11 MR. MASTRO: Your Honor, we talked yesterday about
12 Mr. Alban and Mr. Ponce and Mr. Piaguaje Humberto as witnesses
13 as to whom we had a motion to preclude their testimony. I only
14 really want to come back to one of them, which is Mr. Alban.

15 He is a foreign law expert. We have read his
16 statement. There is absolutely nothing in there that doesn't
17 go to 44.1 issues. To the extent he has addressed anything
18 new, if it's his view of Ecuadorian law, it should have been in
19 the 44.1 statement. We are way past that deadline. He doesn't
20 need to be called to testify live in the courtroom. If they
21 are asking for permission to put in his declaration as a 44.1
22 additional submission, we should have the chance to respond to
23 the new issue. But otherwise he shouldn't be called to testify
24 here, and it should have been put in the 44.1 before on the
25 deadlines your Honor set.

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1 THE COURT: What is the answer to that, folks?

2 MR. FRIEDMAN: Your Honor, there is a distinction
3 between expert testimony on foreign law and expert testimony in
4 general. I will tell you what the distinction is. You can
5 accept it or not accept it.

6 There is expert testimony about laws, statutes
7 regulations, that sort of thing. Mr. Alban is also offered as
8 custom and practice in the community. I will just give one
9 example. There may not be a law that says that briefs get laid
10 outside the judge's door, but he can address the custom and
11 practice. Just like there are customs and practices in New
12 York federal court or New York state court or Alabama state
13 court, there are informal practices that aren't really issues
14 that I think are covered under 44.1. So that is what Mr. Alban
15 would address independent of the foreign law 44.1 issue.

16 THE COURT: So it's only this alleged practice of
17 leaving papers outside a judge's door, is that it?

18 MR. FRIEDMAN: I think there are a couple of other
19 things.

20 THE COURT: Tell me what the couple of others are.

21 MR. FRIEDMAN: I am looking at Mr. Booth.

22 THE COURT: By the way, I am glad you raised it and I
23 am going to digress for a minute because I will forget it
24 otherwise. Both sides in this case have taken to the practice
25 of delivering papers directly to my chambers, and it is to

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1 stop. The security practices in the building for a number of
2 years require that anything that's headed for a judge's
3 chambers be delivered to the marshal's service. They have to
4 get their extremely expensive bomb sniffing dog and God knows
5 what else to review all of this material. I am told, although
6 I can't verify, that the dog is paid more than the judges. But
7 it's a very important dog, and we are going to stick to that.
8 So no more papers to chambers. My staff has the instruction to
9 accept nothing that doesn't have the marshal service stamp on
10 it and has not come through the mailroom.

11 Now, let's go on to the other points.

12 MS. LITTLEPAGE: I can tell you that we got
13 Mr. Alban's statement last night in Spanish. I gave it to the
14 defendants as soon as we got it. I haven't even read it. It
15 came in this morning in English and I haven't had a chance to
16 read it.

17 THE COURT: I am very sorry for that, but Mr. Friedman
18 was going to tell me what else is in there that falls under the
19 heading not of law, but of something like the alleged custom
20 and practice about filing court papers by leaving them on the
21 floor outside the judge's chambers.

22 Anything else?

23 MR. FRIEDMAN: Yes. Can I just have a minute?

24 MR. MASTRO: Your Honor, while Mr. Friedman is
25 looking, if he was being offered for some other expert purpose,

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1 the deadline for offering experts was in February.

2 THE COURT: I said it.

3 MR. MASTRO: I know. I just reinforced it. Thank
4 you, your Honor.

5 THE COURT: I have been reinforced more than I need by
6 both sides.

7 MR. FRIEDMAN: The three other issues are the custom
8 of how evidence is evaluated, that is, there is a distinction
9 between evidence and argument, and how that is customarily
10 viewed in the profession. How things are cited.

11 THE COURT: It might have been a good idea if he had
12 talked to counsel on both sides in this case.

13 MR. FRIEDMAN: References to citations. In other
14 words, attributing or non-attributing citations. So if a judge
15 cites something, what is the custom of citation?

16 THE COURT: Is he a judge?

17 MR. FRIEDMAN: I don't think he is a judge. I think
18 he is a law professor and a lawyer.

19 And the final issue has to do with the lottery system,
20 the lottery system for the appellate panels. There is law on
21 that, but then also how it is customarily --

22 THE COURT: How would he know how it is customarily?

23 MR. FRIEDMAN: I will have to ask him. I think he
24 teaches civil procedure. I don't want to make representations
25 to the Court I don't know about, but what I am telling you is

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1 those are the categories that I understand that would be
2 independent of sort of foreign law 44.1.

3 THE COURT: Do you have anything to say tonight on
4 this or no?

5 MR. MASTRO: Just, your Honor, even that last subject,
6 he talks about different provisions in Ecuadorian law. I
7 understand the distinction that Mr. Friedman is trying to make,
8 but I don't think it is availing. It's either a 44.1 foreign
9 law expert, or if he was supposed to be on for some other
10 purpose, it's way untimely. As I read his declaration, it
11 reads all 44.1 and it's untimely to offer it for anything else.

12 Again, your Honor, we are not saying -- if they are
13 asking to put in something out of time on the 44.1 without
14 permission, and we had the opportunity to respond to it, so be
15 it, but they shouldn't be allowed to call the witness live
16 under these circumstances.

17 THE COURT: See if you can work this out tonight.

18 MR. MASTRO: Certainly, your Honor.

19 I also wanted to give you thumb drives of word
20 searchable versions of all of our witness declarations.

21 THE COURT: I want to be sure that there is no
22 objection to this.

23 Anybody got a problem about that?

24 MR. MASTRO: They are word searchable versions of the
25 witness statements so that they can be searched.

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1 THE COURT: The witness statements and anything else?

2 MR. MASTRO: This is just relating to the witness
3 statements.

4 MR. FRIEDMAN: As long as we get a copy as well.

5 MR. MASTRO: I brought them for everybody.

6 MR. FRIEDMAN: No objection, your Honor.

7 THE COURT: Mr. Gomez?

8 MR. GOMEZ: No objection, your Honor.

9 THE COURT: You have got a free word searchable thing
10 from Chevron.

11 We thank you.

12 MR. FRIEDMAN: I brought gifts as well. You and your
13 clerks might enjoy this. That's all I have got.

14 THE COURT: I rather imagine I will.

15 (Adjourned to November 12, 2013, at 9:30 a.m.)

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21 PLAINTIFF EXHIBITS

22	Exhibit No.	Received
23	6407	1949
24	6405	1962
25	4200 and 4200A	1967

DEFENDANT EXHIBITS

Exhibit No.	Received
1554	1892
1561	1905
1560	1912
92	1921
84 and 85	1948